A COMMENTARY

ON

THE DECREE "NE TEMERE"

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"Voici qu'avec la religion nuptiale la pudicité s'est envolée ; et les mêmes hommes, les mêmes femmes, qui avaient étonné le monde par leur chasteté, l'étonneront par leur luxure."—*Proudhon.*

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The original intention of the writer of these pages was to prepare a more pretentious volume than that which is now offered to the public, but some acquaintance with the theoretical and practical difficulties that have presented themselves to our clergy convinced him that any commentary on the new marriage law would be of service in proportion to its simplicity and clearness and brevity. He has therefore aimed at furnishing a simple, clear and brief explanation of the *Ne Temere*, with what success he leaves the reader to judge.

INTRODUCTION.

The degree *Ne Temere,* published on the 2nd of August, 1907, is a law determining for Catholics the form of valid marriage and of valid engagements to marry. It is a law which is destined to hold an important place in the history of ecclesiastical discipline, for in it we have the first instance, in the nineteen centuries of the Church's life, of a general regulation affecting the solemnities of engagements, and, in the same long period, the second instance of such a regulation touching the formalities required for marriage. An additional interest attaches to it because it is the first fruits of the important work of codification undertaken four years ago.

The right of the Church to enact such a law is beyond question. For marriage is something more than a mere civil contract. Elevated by the Divine Founder of Christianity to the dignity of a sacrament, it has thereby been committed to the care and the control of the Church which Christ empowered to exercise in His name His power over sacred things. Legislation, therefore, which tends to conserve the dignity and sanctity of Christian marriage is both the right and the duty of ecclesiastical authority; and obedience to such legislation is a necessary consequence of Christian conviction.

A great pledge of social security lies in this sacred power of the Church. It has been said with truth that it is hard to find words to express the debt of gratitude which modern civilization owes to the Catholic Church,

and this debt is especially great because of the beneficent influence exerted in so special a manner in regard to marriage, which she has defended and sanctified at all times, even at great cost, fighting, as Leo XIII well said, the battle of civilization as well as of religion.[1] Others may forget or disregard the holiness of the marital state, she is ever vigilant in its defense; good men without her fold may desire correction of abuses and yet lack the power to accomplish needed reform, she has the wisdom to perceive and the capacity to right aught that tends to degrade the marital union; others are but factions or weak individuals, she marshals her children as a great army in the defense of right and truth. All who follow her matrimonial discipline will ever be a healthful leaven in a society where false and noxious concepts of the relation of husband and wife are only too common.

The law which we are about to consider is one which tends in a most effectual way to emphasize the dignity of marriage and to protect it from profanation. It provides for one form, extremely simple but public, for marriages throughout the Western Church, and at the same time it eliminates, in so far as is possible, causes of nullity in the act of celebration. Its great merit is to be found in the assurance which it gives that unworthy or invalid marriages will be practically impossible for Catholics. The influence of such a law must be highly beneficial wherever it operates.

This evident character of the *Ne Temere* has impressed itself on all who have taken the pains to read this new law, and it explains the universal encomiums bestowed upon it by our secular press, which with just discernment has "approved heartily the solicitude shown by a great spiritu-

[1] Encyclical *Arcanum.*

al and ethical leader in regard to a matter that needs far more consideration by society generally, namely, the times, ways and motives of marriage." [2]

Important and far-reaching as this new ecclesiastical law is, it harmonizes perfectly with the sentiments that have had a large part in shaping secular legislation on marriage in our own country. Our States, in common with almost all civilized nations, have long abandoned the theory that the marriage contract is to be regulated solely by natural law. Its supreme interest to society as well as to individuals demands that it be attended with certain formalities, and hence the regulations common to almost every State in the Union providing that persons who wish to marry shall plight their faith in the presence of an official expressly designated and empowered by the law to give public approval to their consent. It is true that the *Ne Temere* speaks of a priest, as the necessary official witness of Catholic marriages, but this is entirely in line with our civil law which always authorizes the priest to act as a qualified public witness of marriage, and with the persuasion of Christians of all denominations that the proper officiant in a religious marriage is a clergyman of the church to which the parties belong.

To us in the United States a uniform law of marriage is certain to commend itself. We are acquainted with the evils which flow from a variety of legislation on this important subject, and we are, most of us, heartily in sympathy with the efforts of individuals or of organizations to remove or to diminish these evils. Moreover our common law traditions have made us accustomed to secular reforms similar to that which this decree of Pius X introduces in the realm of Canon Law, reforms which have

[2] *Boston Herald*, Sept. 18, 1907.

aimed at preventing clandestine marriages through legislation which determines more exactly the form of celebration. A long list of such reforms might be cited, from Lord Hardwicke's Act, in 1753, to a recent law of Massachusetts withdrawing from Justices of the Peace generally the right of witnessing marriages and conferring this right on only a limited number of these officials. It is not too much to say that to many of our non-Catholic citizens this new enactment of the Catholic Church, far from appearing objectionable, will rather offer a reminder of the imperfection of the State laws bearing on the same important matter, and will suggest the reflection that here is seen the operation of a great power which can secure for the State a good which the State needs and which the State itself seems powerless to procure. There is, therefore, in the *Ne Temere* nothing that is odious, nothing that savors of substantial novelty, to even the non-Catholic American.

As to the bearing of the *Ne Temere* on Catholic discipline in the United States much will be said in the course of the commentary which follows, but it may be well to recall at the very outset that, while of course the new requirements for validity demand accurate and perfect fulfillment, nevertheless so far as practice is concerned the new order in its main features entails no change. For we have been accustomed to require that marriage should be entered into before the parish priest of the parties or of one of them, our marriages have regularly been contracted in the presence of at least two witnesses, and the only difference for the future will be that this practice must be followed not only for a lawful but for a valid marriage as well. It is not an exaggeration to say that perhaps the majority of the faithful, even outside those portions of our territory subject to the

Tametsi, have always regarded as of doubtful value marriages celebrated otherwise.

We are, therefore, about to consider a law which does no violence to either secular or religious opinion and practice in the United States. If the case were otherwise, the wisdom and the authority which inspire this law would still command our respect and obedience, but it is surely not unfortunate that new and necessary legislation of so important a character should savor so little of substantial novelty and should impose no hardship.

The *Ne Temere* [3] consists of a preamble and of two sections, one on engagements and the other on marriage. The law proper is found in these latter two sections, but the preamble throws much light on the causes and meaning of many articles of the law and deserves some notice. We shall, therefore, divide this commentary into three sections:

I. PREAMBLE.

II. ENGAGEMENTS.

III. MARRIAGE.

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[3] The complete text of the *Ne Temere* is given in Appendix A.

SECTION I.

PREAMBLE.

NE TEMERE INIRENTUR CLANDESTINA CONIUGIA, QUAE DEI ECCLESIA IUSTISSIMIS DE CAUSIS SEMPER DETESTATA EST ATQUE PROHIBUIT, PROVIDE CAVIT TRIDENTINUM CONCILIUM, *Cap.* 1, *Sess. XXIV de Reform. Matrim.* EDICENS: "QUI ALITER QUAM PRAESENTE PAROCHO VEL ALIO SACERDOTE DE IPSIUS PAROCHI SEU ORDINARII LICENTIA ET DUOBUS VEL TRIBUS TESTIBUS MATRIMONIUM CONTRAHERE ATTENTABUNT, EOS SANCTA SYNODUS AD SIC CONTRAHENDUM OMNINO INHABILES REDDIT, ET HUIUSMODI CONTRACTUS IRRITOS ET NULLOS ESSE DECERNIT."

Since the Council of Trent the term "clandestine marriage" has come to have a peculiar meaning in the language of canonists and theologians, that is, to designate a marriage contracted in violation of the famous Chapter *Tametsi* referred to in this initial paragraph of the new law. But the original signification of clandestine was something different, something, in fact, more in accordance with the generally accepted meaning of the word. It meant regularly a marriage contracted secretly, and usually without the blessing and countenance of the Church.[4]

[4] In those dioceses of the United States which were not subject to the *Tametsi*, clandestine marriages were those contracted "coram

Clandestine marriages in this earlier sense were always regarded with disfavor as promoting illicit and at times invalid unions, and opening the way to other serious evils. As early as the second century we find St. Ignatius Martyr declaring that Christians should be married with the approval of the Bishop,[5] and Tertullian affirming that secret marriages, that is those not professed in the presence of the Church, run the risk of being judged akin to adultery and fornication.[6] This doctrine of Tertullian recurs often enough in subsequent medieval texts,[7] but while it was always understood that these clandestine unions were gravely illicit [8] no general law invalidated them until the sixteenth century. In 1215 the Fourth Lateran Council [9] struck at them in the strict requirement of banns, but this canon contained no invalidating clause. The contracting parties were the ministers of the Sacrament, and not a few authorities were inclined to doubt the possibility of imposing on them by positive law any special conditions for validity.

The consequence was that at the time when the Council of Trent was held, all that was necessary for marriage was the consent of the parties. This consent might be given in any circumstances, without witnesses, without inquiry as to the existence of impediments, without any public notification of the contract, and it is easy to con-

magistratu civili, vel ministro acatholico, vel nullo teste praesente." IInd Synod of Trenton, n. 146; I Omaha, n. 132; VIII Newark, n. 88.

[5] Ep. ad Polycarpum, c. 5. [6] *De Pudicitia*, c. 4.

[7] Freisen, *Geschichte des Canonischen Eherechts*, par. 17.

[8] Alexander III decreed that a priest who blessed a marriage "occulte" should be suspended for three years (*Comp.* II, IV, III, 2) and authorized the excommunication of those who presumed to marry otherwise than publicly in the presence of witnesses. (*Comp.* I, IV, IV, 4.)

[9] Canon 51.

ceive that such a condition was calculated to produce evil results. Bigamy was easily possible and it was frequent. If one of the parties denied the existence of the union, disproof was difficult, and some particular councils even provided that these secret unions should be regarded as null when denied by either the husband or the wife.[10] This view found expression in the Corpus Juris, where, however, the equivalent of the modern common law marriage was recognized, denial by one or the other of the parties being ineffectual if the persons concerned had lived as husband and wife and been known as such.[11]

The Church entrusted with the care and dispensation of the Sacraments, could not permit the continuance of a condition so prejudicial to the great Sacrament of marriage. Still less could she decline to act, inasmuch as the civil authorities of every nation implored her intervention; in fact, secular princes as well as Protestant churches had already led the way in declaring clandestine marriages invalid.[12] There was a general consent that reform was urgently demanded, but the Fathers of Trent were by no means unanimous as to the precise shape which this reform should take, and to the very end of their deliberations a considerable party, including a papal legate, was opposed to any nullifying clause.[13] However, the sounder view finally prevailed, that mere prohibitions of any character would be entirely ineffectual, and that hope of reform lay only in a decree invalidating all marriages not celebrated according to a prescribed form. The law fixing this form, the first instance of the kind in the history of the Church, has become famous under a name derived

[10] Council of London, 1102, c. 22. [11] IV, III, 2.
[12] Theiner, *Acta Genuina Conc. Trid.*, Vol. II, p. 316, p. 352.
[13] Theiner, *Acta Genuina*, II, p. 467.

from the initial word of the Chapter in which it was embodied, the Chapter *Tametsi*.[14] It required that all marriages should be contracted in the presence of a parish priest or the Ordinary or a delegate of either, and of two or three witnesses. All other marriages were to be invalid.

SED CUM IDEM SACRUM CONCILIUM PRAECEPISSET, UT TALE DECRETUM PUBLICARETUR IN SINGULIS PAROECIIS, NEC VIM HABERET NISI IIS IN LOCIS UBI ESSET PROMULGATUM; ACCIDIT UT PLURA LOCA, IN QUIBUS PUBLICATIO ILLA FACTA NON FUIT, BENEFICIO TRIDENTINAE LEGIS CARUERINT, HODIEQUE CAREANT, ET HAESITATIONIBUS ATQUE INCOMMODIS VETERIS DISCIPLINAE ADHUC OBNOXIA MANEANT.

The method chosen for promulgating the *Tametsi* was altogether unusual, there being no precise parallel to it in previous or subsequent Church history. In order to avoid difficulties with non-Catholics, it was decreed that the law should bind only in those parishes in which it had been published. When we consider the special circumstances of the time, and especially the clear lines of demarcation between Catholic and Protestant communities, the wisdom of such a course is clear. But the three centuries which have passed since the Council of Trent have brought about changes which the Fathers of the Council could not have foreseen and which have defeated in many instances their well-conceived plans. The religious boundaries set up by the stern conflicts of the years immediately following the reformation have entirely disappeared, and extremely

[14] Conc. Trid., Sess. xxiv, cap. 1, *de ref. matr.*

rare today is a city or a town whose citizens are all of one religious faith.

As compenetration of the different religious bodies progressed, questions regarding both mixed marriages and the marriages of Protestants began to demand an answer in the courts of the Church. Would these marriages, if contracted in violation of the Tridentine law, be regarded as invalid? The Low Countries, overrun with a Protestant soldiery offered the first cases and those most insistent for solution.

The Acts of the Congregation of the Council [15] reveal a disposition in the beginning to insist on invalidity, but this tendency gradually weakens until Benedict XIV is able to declare [16] that neither mixed marriages nor the unions of Protestants in the federated provinces of Belgium are subject to the law of Trent. As to the precise nature of his decree, whether it must be considered a simple declaration or a dispensation, opinion was divided; but no one doubted that if its terms were to apply to other countries a special extension was necessary, and this extension was pretty generally granted. Not universally, however, with the result that in some places mixed marriages were valid and in others invalid, and similarly the validity of Protestant marriages was recognized in one locality and denied in another.

Moreover the parochial publication demanded by Trent opened the way to another unforeseen difficulty. It was expected as a matter of course that the *Tametsi* would be eventually promulgated in all parishes throughout the Church. But for one reason or another such was not the

[15] See the interesting series of cases in Richter, *Canones et Decreta Concilii Tridentini*, p. 290 ss.

[16] Nov. 4, 1741.

case, so that in many places and even in whole nations the beneficial effects that Trent was expected to procure were unknown. In these exempt localities, the old Tridentine conditions persevered, and the result was not one universal discipline but a variety of practice, serious and objectionable, touching as it did the very conditions for the validity of marriage.

Nowhere perhaps was this diversity of legislation more apparent than in our own country. Here the territory affected by the *Tametsi* was comparatively limited,—the entire province of New Orleans, almost the entire province of Santa Fe and almost the entire province of San Francisco; the Diocese of Indianapolis; the city of St. Louis, St. Geneva, St. Ferdinand and St. Charles of the Diocese of St. Louis; and Kaskaskia, Cahokia, French Village, and Prairie du Rocher of the Diocese of Belleville. This at least is the list given by the Bishops of the Third Plenary Council [17] in a letter to the Propaganda, although a communication from the Cardinal Prefect of the Progaganda to the Bishop of Belleville [18] leaves the completeness of this list open to question, and subsequent erections of parishes have made some additions necessary. In 1885 the Benedictine Declaration was extended to all the abovementioned localities with the exception of Santa Fe. The consequence was that under the *Tametsi* a triple matrimonial law governed the United States. In most places all that was essential for a valid marriage was the simple consent of the contracting parties, without the presence of a priest or of witnesses. In other places a Catholic could not marry a Catholic except in the presence of the parish priest of at least one of the parties and of two or three wit-

[17] Acta et Decreta Conc. Plen. Balt. III, p. cvii.
[18] De Becker, *De Sponsalibus et Matrimonio*, p. 134.

nesses, but a Catholic could marry a baptized Protestant, or Protestants might inter-marry validly, either before a Protestant clergyman or before a secular official, or even by a simple exchange of consent without any formality. Finally, in the province of Santa Fe, the *Tametsi* affected all matrimonial unions of baptized Christians, there being no exception for mixed or Protestant marriages. Here certainly was a diversity of theory and of practice which to many seemed to demand adjustment. Besides, it seemed well nigh impossible to know with certainty all the localities affected by the law of Trent. No accurate list existed and authors who attempted to name the districts where the *Tametsi* was in force were generally careful to declare that their account laid no claim to completeness.[19] The repeated petitions addressed to the Propaganda and to the Congregation of the Council by Bishops who were in doubt as to the status of their territory [20] show that the purpose of the law on clandestinity was not as easily or as certainly attained as its framers had hoped.

VERUM NEC UBI VIGUIT NOVA LEX, SUBLATA EST OMNIS DIFFICULTAS. SAEPE NAMQUE GRAVIS EXSTITIT DUBITATIO IN DECERNENDA PERSONA PAROCHI, QUO PRAESENTE MATRIMONIUM SIT CONTRAHENDUM. STATUIT QUIDEM CANONICA DISCIPLINA, PROPRIUM PAROCHUM EUM INTELLIGI DEBERE, CUIUS IN PAROECIA DOMICILIUM SIT, AUT QUASI DOMICILIUM ALTERUTRIUS CONTRAHENTIS. VERUM QUIA NON-

[19] See Gasparri, *Tractatus Matrimonio*, II, p. 528; Bassibey, *Clandestinité*, p. 366; Gury-Ferreres, *Comp. Theol. Moralis*, II, n. 838.

[20] See query of the Archbishop of San Francisco in Conc. I Prov. Sancti Francisci, p. 66.

NUNQUAM DIFFICILE EST IUDICARE, CERTO NE CONSTET DE QUASI-DOMICILIO, HAUD PAUCA MATRIMONIA FUERUNT OBIECTA PERICULO NE NULLA ESSENT: MULTA QUOQUE, SIVE INSCITIA HOMINUM SIVE FRAUDE, ILLEGITIMA PRORSUS ATQUE IRRITA DEPREHENSA SUNT.

A literal interpretation of Chapter I, Session XXIV, *de ref. matr.* of the Council of Trent, would seem to justify the opinion that a valid marriage might be contracted before the parish priest of the place where the marriage took place, even if he did not happen to be the priest of either of the contracting parties, and similarly that this same parish priest of the place might legally authorize another priest to assist in his stead. But from a time immediately following the Council, jurisprudence imposed another view and required the presence of or delegation by the *proprius parochus,* that is, the priest in whose parish at least one of the parties had a domicile or, in other words, an actual residence with the intention of remaining there perpetually. At first this domicile alone sufficed. But canonists and tribunals, confronted with innumerable cases in which real domicile was not verified but an intention of residing for a considerable time was clearly present, were forced to recognize a quasi-domicile as sufficient in reference to marriage. This idea of quasi-domicile has a history that is peculiarly interesting, covering the long period between the close of the sixteenth century and the year 1867, in fact it was not until the 7th of June, 1867, that it became universally recognized that to obtain a quasi-domicile it was necessary to have the intention of residing in a place for at least six months. Before this date a notable diversity of opinion and practice prevailed, and in many dioceses of France a residence of one month in a parish was considered sufficient.

But everywhere the parish priest became a competent witness only when the requirement of at least a quasi-domicile had been fulfilled, and since in not a few cases, especially in large cities, mistake or deception was possible the result was that out of this particular phase of the Tridentine discipline there grew a fine harvest of null or doubtful marriages, a corespondingly large number of litigations, and in more recent times demands for special indults [21] to obviate the inconveniences which multiplied from day to day.

HAEC DUDUM DEPLORATA, EO CREBRIUS ACCIDERE NOSTRA AETATE VIDEMUS, QUO FACILIUS AC CELERIUS COMMEATUS CUM GENTIBUS, ETIAM DISIUNCTISSIMIS, PERFICIUNTUR. QUAMOBREM SAPIENTIBUS VIRIS AC DOCTISSIMIS VISUM EST EXPEDIRE UT MUTATIO ALIQUA INDUCERETUR IN IURE CIRCA FORMAM CELEBRANDI CONNUBII. COMPLURES ETIAM SACRORUM ANTISTITES OMNI EX PARTE TERRARUM, PRAESERTIM E CELEBRIORIBUS CIVITATIBUS, UBI GRAVIOR APPARERET NECESSITAS, SUPPLICES AD ID PRECES APOSTOLICAE SEDI ADMOVERUNT.

The difficulties indicated in preceding paragraphs were apt to appear and did assert themselves even when travel was difficult and modern immigration undreamed of. As is evident, they were bound to grow with increased facility of travel, which allowed many individuals subject to the *Tametsi* to seek an exempt district, marry there, and then return, or persons regularly free to become subject, perhaps without their knowledge, on the occasion of a journey. The dangers attendant on the close proximity of countries

[21] *Acta Sanctae Sedis*, XXXVIII, pp. 208-211.

like England and France were accentuated in territories like the Archdiocese of St. Louis, where a ride of a few minutes might determine the validity or invalidity of a marriage. It is not surprising that in view of these facts repeated attempts were made by prelates from all parts of the world to secure a change in the law governing the form of marriage. The bishops of the United States had recorded as early as 1843 [22] their desire to limit the *Tametsi* to as narrow a field as possible, and in 1866 [23] they had gone so far as to petition the Holy See, but without success, for an abrogation of that law in every diocese where it had been promulgated, with the sole exception of the province of New Orleans. They had also in the Second Plenary Council, made the novel provision that any case of doubt as to the promulgation of the *Tametsi* was to be decided by the Ordinary.

At the Vatican Council many French bishops [24] clearly signified that they desired the transformation of clandestinity from a diriment into a merely prohibitory impediment, and during the past forty years it has become more and more apparent that the law of Trent, perfectly adapted to the times in which it was framed, did not suit modern conditions. Hence special indults granted from time to time, altering materially the law of quasi-domicile; hence also the desire of all who had to do with matrimonial procedure to bring the canons on the celebration of marriage into closer harmony with modern conditions.[25]

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[22] Conc. Balt. Prov. V, n. 4.
[23] Conc. Plen. II, n. 340.
[24] Collectio Lacensis, VII, col. 842.
[25] Gasparri, II, n. 1089.

FLAGITATUM SIMUL EST AB EPISCOPIS, TUM EUROPAE PLERISQUE, TUM ALIARUM REGIONUM, UT INCOMMODIS OCCURRERETUR, QUAE EX SPONSALIBUS, IDEST MUTUIS PROMISSIONIBUS FUTURI MATRIMONII PRIVATIM INITIS, DERIVANTUR. DOCUIT ENIM EXPERIENTIA SATIS, QUAE SECUM PERICULA FERANT EIUSMODI SPONSALIA: PRIMUM QUIDEM INCITAMENTA PECCANDI CAUSAMQUE CUR INEXPERTAE PUELLAE DECIPIANTUR; POSTEA DISSIDIA AC LITES INEXTRICABILES.

Before the *Ne Temere,* engagements to marry might be entered into secretly without any writing or witnesses, so that generally proof of the engagement was all but impossible if one of the parties denied it. At the same time very serious consequences flowed from valid *sponsalia,* since they gave rise to both a prohibitory and a diriment impediment to marriage, which persisted even when the engagement was dissolved or disregarded. These consequences made it necessary at times that a judicial inquiry should be instituted to ascertain the justice of a claim brought forward by a litigant. But, supposing that one of the parties denied the existence of an engagement, what hope could there be ordinarily of any satisfactory outcome even if a real contract had been concluded? Nothing more disappointing than a case *de sponsalibus* under the old law could well be imagined, since not only the facts in the case had to be ascertained, but also the mind of the parties as to the binding force of their engagement.

It was this difficulty of proof probably that was in some measure responsible for the view current in some localities that real *sponsalia* were never verified. Certainly in the United States there was an almost universal persuasion that such engagements as occurred here were not canonical *sponsalia.* But this opinion was sustained by no au-

thority and the clearest proof of its inaccuracy was to be found in the action of those diocesan Curiae which happened to be called upon to examine cases of broken faith, and which always felt bound to institute a careful inquiry and to render judgment in the light not of popular impressions but of the common law of the Church. In this country, as elsewhere, we were confronted with the legal difficulties consequent on unregulated engagements.[26]

To many persons, the serious moral inconveniences of the old system will perhaps seem a stronger reason for new legislation. No one denied, and experience compelled recognition of the fact, that private engagements opened a wide door to grave disorders. They brought the interested parties into most intimate relations, relations that seemed to justify a certain familiarity because of the apparent assurance of future marriage; they were apt to be entered into without due reflection because of their informal and even secret character; and they were apt also to elude the helpful supervision of parents who in case of a public engagement would have been able to exercise some degree of watchfulness. Sin and betrayal were the frequent fruits of such a condition of things.

The prime source of the evils referred to above lay in the facility with which *sponsalia* might be contracted, and for some time a movement of reform had been directed towards securing legislation which would render them more formal. At the Vatican Council this matter was given considerable attention in the *postulata* of many prelates. The Bishops of central Italy petitioned that a written document might be made an essential condition for a valid

[26] Sabetti-Barrett, *Comp. Theol. Moralis*, n. 837, q. 3; Putzer, *Commentarium in Facultates Apostolicas*, p. 186; Kenrick, *Theol. Moralis*, XXI, I, 13.

engagement; the Bishop of Concordia requested that no legal recognition should be given to *sponsalia* contracted without the knowledge of parents or without two witnesses; and the Bishops of the Provinces of Quebec and Halifax asked that only solemn *sponsalia* should give rise to the impediment of public honesty.[27] The latest petition in this connection addressed to the Holy See by the Bishops of Liguria and Apulia in 1905,[28] evoked a *dilata* from the Congregation of the Council, but with the important proviso that the question of *sponsalia* should be thoroughly studied and special account taken of it in the new code. This was the first indication that a new law on the form of engagements might be expected in the near future.

His rerum adiunctis permotus SSmus D. N. Pius PP. X pro ea quam gerit omnium Ecclesiarum sollicitudine, cupiens ad memorata damna et pericula removenda temperatione aliqua uti, commisit S. Congregationi Concilii ut de hac re videret, et quae opportuna aestimaret, Sibi proponeret.

Voluit etiam votum audire Consilii ad ius canonicum in unum redigendum constituti, nec non Emorum Cardinalium qui pro eodem codice parando speciali commissione delecti sunt: a quibus, quemadmodum et a S. Congregatione Concilii, conventus in eum finem saepius habiti sunt. Omnium autem sententiis obtentis SSmus Dominus S. Congregationi Concilii mandavit, ut decretum ederet quo leges a Se, ex certa scientia et matura deliberatione probatae,

[27] Laemmer, *Zur Codification des Canonischen Rechts*, p. 137.
[28] *Monitore Ecclesiastico*, XVII, p. 340.

CONTINERENTUR, QUIBUS SPONSALIUM ET MATRIMONII DISCIPLINA IN POSTERUM REGERETUR, EORUMQUE CELEBRATIO EXPEDITA, CERTA ATQUE ORDINATA FIERET.

IN EXECUTIONE ITAQUE APOSTOLICI MANDATI S. CONCILII CONGREGATIO PRAESENTIBUS LITTERIS CONSTITUIT ATQUE DECERNIT EA QUAE SEQUUNTUR.

The remote preparation of the *Ne Temere* can be traced back for centuries, since the various difficulties incident to the application of the *Tametsi* were ever suggesting the need of reform. Its proximate preparation covers a period of over two years, dating from a decision given by the Congregation of the Council on May 20, 1905.[29] At that time the Congregation was unanimous in affirming the necessity of new legislation and ordered that two canonists should be asked to present statements from which might be drawn a decree modifying the *Tametsi*. This decree was to be framed, keeping in view four principles, (*a*) the assistance of a priest at a marriage should be entirely voluntary, (*b*) in every case the freedom from impediment should be clearly proved, (*c*) the presence of two or three witnesses, and of the Ordinary or the parish priest of the place of contract ought to be sufficient for validity, (*d*) the new decree should affect the marriages of Catholics with Catholics throughout the world.

In the light of these principles, Archbishop Sili and Monsignor Lombardi presented to the Congregation of the Council on February 17, 1906, two able discussions of the law regarding the form of marriage and of desired reforms, as did also Archbishop De Lai, then Secretary of the Congregation.[30] Each of these *vota* was accom-

[29] *Acta Sanctae Sedis*, XL, p. 531.
[30] *Acta Sanctae Sedis*, XL, pp. 533 ss.

panied with a project or *schema* of the proposed law. The Cardinals at this session progressed so far as to agree on the following general formula, to be incorporated in substance if not in form in the future decree,—"All Catholics throughout the world, even in places where the *Tametsi* has not been published shall not be able to contract a valid marriage unless they exchange their consent in the presence of a parish priest (or Ordinary) of the place, and of at least two witnesses; the parish priest must be present in answer to an invitation, and all surprise marriages, as also all marriages contracted otherwise than as provided above, shall be null and void." [31] The statement of the law, and its minor details, were left for subsequent consideration, and at this point, after consultation with His Holiness, the Secretary of the Congregation was directed to confer with the Secretary of the Codification Commission, since it was evident that here was a matter which must receive treatment in the code on which the Commission was at work.

Thereupon, the consultors of this Commission undertook a study of the project of the Congregation, first in special committees and then as a body, taking special account of what had been done by the Holy Office in 1905 when the Bull *Provida* had been prepared for Germany, and the outcome was a new *schema* which, with the observations of certain consultors, was presented to the Congregation of the Council July 14, 1906.

At this session, after the entire subject had been gone over again very thoroughly, the decision was reached to order the preparation of another project of the law, which was presented more than six months later, on January 26, 1907. Further examination of this *schema* was deemed

[31] *Ibidem*, p. 567.

advisable, and led to the re-submission of the rough draft of the decree to the Congregation on March 23, 1907, when a canon on *sponsalia* appeared for the first time. The law was approaching its final development, and after it had undergone additional revision and had been submitted again for the last time to the Congregation, it was presented for definitive papal approval.

Surely there is in this history of the framing of the *Ne Temere* much that is calculated to secure for it a high degree of respect. It has been formulated in a manner worthy of the lofty subject with which it deals and of the vast body of Christians whom it is to affect. It was not thrust upon the world thoughtlessly or precipitately. For over two years all that the Church can boast of ripe experience in intricate matrimonial cases, of thorough acquaintance with the history and application of law, of familiarity with local differences and difficulties, has gone to the fashioning of this latest product of her legal creative genius. The *Ne Temere* must be, and it is, a wise law.

The purpose of the new law, no less than the manner of its preparation must win for it the respect of all men, whatever be their religious affiliations. It tends to facilitate the celebration of marriage, but in such a way that at the same time doubt, so undesirable in reference to this important matter, and disorder, so repugnant to the reverence due to the Sacrament, are excluded in so far as is possible to human prudence. Here is a consummation devoutly to be wished. We can go farther and cherish the assurance that this law means more than aspiration after an ideal; it will attain its purpose. For it comes to the millions of the faithful with the authority of the supreme legislator of Christendom.

The *Ne Temere* is a papal law. It appears under the guise of a decree of the Congregation of the Council, but

the Pope has made it his own, and the Congregation is simply bringing to public notice laws which Pius X has approved and made his own in a most special manner. He it was who committed to the Congregation the preparation of this decree, he watched every step of its development, he approved it in a way that lends to it all the solemnity that attaches to the decrees of an ecumenical council, he made of it a papal law. In fact, such a law as this transcends the powers of the Congregation of the Council, which has no ordinary authority to decree really new legislation of this kind. The Congregation is performing here simply a ministerial function.

SECTION II.

ENGAGEMENTS.

I. — Ea tantum sponsalia habentur valida et canonicos sortiuntur effectus, quae contracta fuerint per scripturam subsignatam a partibus, et vel a parocho, aut a loci Ordinario, vel saltem a duobus testibus.

Quodsi utraque vel alterutra pars scribere nesciat, id in ipsa scriptura adnotetur; et alius testis addatur qui cum parocho, aut loci Ordinario, vel duobus testibus, de quibus supra, scripturam subsignet.

From this article it follows that after Easter, 1908, *sponsalia* or engagements to marry, to be valid and productive of canonical effects:

(1). Must be brought into being by a DOCUMENT, signifying a promise of marriage given and accepted by both parties, AND SIGNED BY BOTH: and in addition,

(2). IF BOTH PARTIES CAN WRITE, this document must be SIGNED ALSO BY THE PARISH PRIEST of the place of the contract *or* by THE ORDINARY OF THAT PLACE *or* BY TWO WITNESSES:

(3). IF BOTH PARTIES OR ONE OF THEM CANNOT WRITE, MENTION OF THAT FACT MUST BE MADE in the document and AN ADDITIONAL WITNESS MUST SIGN.

Here, as has been remarked above, we have the first ex-

ample of a general ecclesiastical law requiring for valid *sponsalia* something more than mutual consent expressed by some outward sign. However, in Spain since 1803, no engagements to marry were considered binding unless evidenced by an authentic document drawn up by a civil notary. This discipline owed its origin to a decree of Charles IV, and was therefore originally based on a secular law, but custom had given it force in the Church of Spain, and its authority had been recognized by several decisions of Roman Congregations,[32] and was maintained, curiously enough, even after the new code of Spain had abolished the law of Charles IV. Leo XIII extended it to Latin America on the occasion of the recent Plenary Council held in Rome,[33] and it was considered to be in force also in the Philippine Islands.[34]

But attempts in other localities to introduce a similar practice failed of approval. Diocesan regulations adding to the provisions of the natural law were declared null and void, and petitions for a change of the common law were answered by an admonition that no innovation in this respect might be introduced. This is all the more remarkable in as much as some prelates at the Council of Trent desired that engagements should be valid only when contracted in the presence of three witnesses and wished that a canon to that effect should be incorporated in the *Tametsi*.[35] Pius IX in 1865 in a letter to some bishops of northern Italy, suggested and advised that the faithful be persuaded never to contract *sponsalia* without a witness, but this of course was far from an enactment of a condition

[32] S. Cong. Concilii, Jan. 31, 1880; Apr. 11, 1891.
[33] S. Cong. Neg. Extraord., Jan. 1, 1900; Nov. 5, 1901.
[34] Gury-Ferreres, *Comp. Theol. Moralis*, II, n. 723.
[35] Theiner, *Acta Genuina*, II, p. 335.

for validity, and did not prevent the Congregation of the Council from persisting in its traditional attitude down to the year 1905, when repeated requests from Italian bishops started the deliberations which have resulted in this first article of the *Ne Temere.*

But what is the extent of the invalidity which the law decrees? That it operates *in foro externo* is beyond question. But does it also imply so complete an annihilation of the agreement that no vestige of an obligation, even in conscience, arises from an engagement which has not been expressed in the documentary form here prescribed? It is certain that the Church can render void, for just cause, obligations such as spring from the contract in question. It is certain also that the Pope has exercised in the past the specific power of dispensing from *sponsalia,* which implies the destruction of any obligation, even *in foro interno,* resulting from them. It is likewise certain that only six years before the publication of the *Ne Temere,* the Congregation of Extraordinary Affairs decided in answer to a query from Latin America, that informal *sponsalia* in countries where the Spanish discipline prevailed were not valid even *in foro interno.*[36] This decision has a special pertinence to this first article of the *Ne Temere,* because the legal status of informal *sponsalia* throughout the entire Church since Easter, 1908, is the same as was that of informal *sponsalia* in Latin America in 1901. The reasons which demanded the decision of 1902 demand a similar interpretation of the provisions of the *Ne Temere* regarding *sponsalia.*

Another consideration which renders it necessary to admit the operation of this law *in foro interno* is to be found in one of the purposes of the present decree. The Pope aims at removing the difficulties and dangers and

[36] Nov. 5, 1901.

doubts attendant on the old system, but if, even after the promulgation of this remedial enactment, *sponsalia* contracted contrary to the requirements of law are allowed to bind in conscience the real source of evil will still remain, and especially the incitement to sin and the facility of deception will be verified in precisely the same degree as before.

This is evidently a detail of the new law which will have to be insisted upon if the benefits aimed at by the *Ne Temere* are to be secured to the faithful, since otherwise the impression will remain that some sort of obligation results from an oral engagement. The fact is that unless the requirements of this first article have been complied with, there is no engagement, and nothing that the parties do can furnish a presumption or a proof of its existence. They may apply for a dispensation or for publication of the banns, or declare orally that they intend to get married,—they are not engaged.

It seems useless to discuss in this connection the question whether unilateral promises to marry remain valid. They are rare, and when they do exist they are not *sponsalia,* and hence are not affected by the *Ne Temere.*

The *official* witnesses designated in this article are the parish priest and the Ordinary, and in the presence of so definite an indication it is impossible to admit any other officials to act in that capacity, or to allow delegation.[37] The parish priest and the Ordinary are here authorized and qualified in the same way as are notaries, and such a capacity cannot be delegated. To obviate any possible inconvenience when another priest is requested to act, there is the ready remedy of securing another witness (besides the priest) and thus fulfilling the requirement of two unofficial witnesses.

[37] S. Cong. Conc. March 28, 1908, ad VI. Appendix B.

IT IS NECESSARY FOR VALIDITY THAT THE ORDINARY OR THE PARISH PRIEST SHOULD BE IN CHARGE OF THE LOCALITY IN WHICH THE SPONSALIA ARE CONTRACTED; it is not required (though it is altogether desirable and advisable) that the *sponsi* be subjects or parishioners of the priest before whom they appear.[38]

Unofficial witnesses are required when the parish priest or the Ordinary does not witness the *sponsalia.* These unofficial witnesses must be in some cases two in number, in other cases three; the distinction being due to the fact that *when both the principals can write,* and the parish priest or Ordinary does not assist, only *two witnesses* are necessary, but *when both or one of the parties is unable to write, an additional witness must sign.* In this latter case, *mention of the fact of inability to write must be made in the document,* and only one additional witness is required even when both parties cannot write.

The rule requiring mention of the fact of illiteracy and the signature of a special witness, must be observed for validity even when *sponsalia* of illiterates are contracted in the presence of a parish priest.

The law insists on no special qualities in these unofficial witnesses, except ability to write, as they must affix their signatures. Consequently anyone who has the use of reason may act in this capacity, whether child or adult, man or woman, Catholic or non-Catholic. This is all the more evident in as much as the Congregation refused to approve the recommendations of some consultors [39] insisting on special qualities in the witnesses.

This law governs *sponsalia* of *Catholics with Catholics,* as well as of *Catholics with baptized or unbaptized non-*

[38] S. Cong. Conc. March 28, 1908, ad VII. Appendix B.
[39] *Acta Sanctae Sedis,* XL, p. 575.

Catholics: it does not affect *sponsalia* in which both parties are non-Catholics, whether baptized or unbaptized (see Article XI). Therefore if in any case it becomes necessary to take account of the latter, they must be judged in the light of the old legislation.

Since valid *sponsalia* take the form of a written contract, it is clear that just as other contracts may be entered into through a properly appointed agent, so also it is possible to contract *sponsalia per procuratorem.* Needless to say, it would be necessary to have indubitable proof of the appointment of the agent for the specific purpose of contracting *sponsalia* with a designated person, and it would also be necessary that such proof be convincing in the judgment of the parish priest or the witnesses.

The decree says nothing about the precise form which the contract shall take, and therefore any form suffices in which there is contained a promise of future marriage, given and accepted by both parties.[40] It may be a printed form, with spaces for the insertion of the names. It is advisable, though not required by the law, to insert the date and place of the agreement, and the seal of the parish priest may be affixed if the parish priest assist. The law is also silent as to who shall keep the document, but prudence will suggest that it be left with a third party, preferably with the parish priest.

With the exception of the indicated innovation in regard to the form, the old law on *sponsalia* remains unchanged. Especially to be noted is the fact that the old causes for the dissolution of *sponsalia* still hold, and that therefore a written revocation is not required. However, if the revocation be merely oral and a dispute arise later,

[40] See suggested form, Appendix E.

the burden of proof will rest on him who denies the value of the original written contract.

What the practical influence of this legislation will be on engagements is difficult to determine. Men and women who contemplate marriage, will continue to agree to marry, and it is quite likely that if this new doctrine, that an oral engagement has absolutely no value, be proclaimed generally and well explained, written betrothals will be frequent. This is desirable. It is calculated to inspire a deeper regard for the seriousness and sanctity of marriage, and especially to prevent hasty or foolish unions.[41] Another and by no means to be despised good secured by the assertion of this teaching will be to call public attention to the authority of the Church in this matter.

Some idea of the beneficial effects of the new law in regard to procedure can be gathered from a perusal of Article XXXIV of our *Matrimonial Instruction,* where a detailed and difficult inquiry is indicated, which happily will no longer be necessary.

The tendency in modern secular codes is to minimize the importance of promises to marry. In every civilized country, save Sweden and Norway, they furnish no ground for insistence on marriage, but, at most, for a suit for damages. In this matter of damages the laws of the courts of most countries take into account only material loss, but in England, the United States, Servia, Peru, and some

[41] "Apropos of Easter announcements of matrimonial engagements, how many of them are set down in writing, according to the new marriage law of the Roman Catholic Church? Whatever may be said in behalf of the sacredness of the unwritten promise, there is a certain fitness in the decree that every prenuptial contract shall be written and duly attested. If it were made generally obligatory on men and women of all creeds, it would save a good deal of the scandal that grows out of broken vows and misunderstandings."—*Boston Herald,* April 20, 1908.

cantons of Switzerland both pecuniary and moral injury are considered in reaching a verdict.[42] The Swedish engagements, which maintain in modern secular law the ancient importance of betrothals, are contracted in writing in the presence of five witnesses, and imply an obligation to marry which can be insisted on in the civil courts.[43] Actions for breach of promise brought by or against Catholics in our courts may involve a consideration of the *Ne Temere,* especially if the promise be only oral, since Catholics will be unable to promise marriage validly in that manner.

MEANING OF THE TERM *PAROCHUS.*

II. NOMINE PAROCHI HIC ET IN SEQUENTIBUS ARTICULIS VENIT NON SOLUM QUI LEGITIME PRAEEST PAROECIAE CANONICE ERECTAE; SED IN REGIONIBUS, UBI PAROECIAE CANONICE ERECTAE NON SUNT, ETIAM SACERDOS CUI IN ALIQUO DEFINITO TERRITORIO CURA ANIMARUM LEGITIME COMMISSA EST, ET PAROCHO AEQUIPARATUR; ET IN MISSIONIBUS, UBI TERRITORIA NECDUM PERFECTE DIVISA SUNT, OMNIS SACERDOS A MISSIONIS MODERATORE AD ANIMARUM CURAM IN ALIQUA STATIONE UNIVERSALITER DEPUTATUS.

The term parish priest, employed in the first article, will recur frequently throughout the following sections of the law, and here a special article is devoted to its definition. Such definition is rendered necessary by the various degrees of perfection in organization found in different parts of the Church, and previous experience in regard to

[42] Geary, *Marriage and Family Relations,* p. 409; Bishop, *Marriage and Divorce,* II, par. 226; Lehr, *Le Mariage,* p. 431.
[43] Lehr, p. 385.

enactments in which the term parochus had been employed without explanation [44] indicates the wisdom and the necessity of forestalling doubts and queries by giving to *parochus* a broad meaning.

Where parishes are canonically erected, the significance of the term *parochus* is clear. In fact, *only the head of such a parish is a parochus in the strict sense.* But in the case of the present law, which is intended to furnish the norm for every church in the world, the term *parochus* must be more comprehensive. There are considerable territories, like our country and England, where no canonical erections of parishes have been effected, but where the organization is quasi-parochial, with distinct territorial limits for each church. *Here the term parochus embraces all those who, like canonical parish priests, have charge of a certain territory.* In missions where no territorial boundaries have been defined, only a positive declaration by authority such as we find in this article could determine who come under the appellation of *parochi,* and make it certain that whoever receives *from the Superior of the Vicariate or Prefecture or Mission the general care of souls at some post or station is a* parochus *for the purposes of the present law.*

The text of the *Ne Temere* fails to notice a special form of parochial organization, frequent enough in the United States and not uncommon elsewhere, which supposes a purely personal competency of the parish priest, who attends to the wants of *a flock determined not by residence in a certain locality, but by rite or language or sometimes by the hiring of a pew.* The priests of such parishes having no territory of their own could claim no parochial rights under the *Ne Temere.* But it was evidently desirable and

[44] *E. g.*, the decree of the Holy Office, Feb. 20, 1888.

necessary that some provision should be made in their favor, and this was done by the Congregation of the Council at a session held on February 1, 1908, when the Congregation took up the consideration of personal parish priests, of rectors of institutions exempt from parochial jurisdiction, and of army chaplains.

There are three classes of these personal parish priests, —*a*) the authority of a priest may be purely personal, having no relation at all to territorial limits, the pastor following the members of his flock wherever they may happen to be; *b*) the priest's authority may be personal (to be exercised only in reference to persons speaking a certain language or belonging to a certain nationality or race) but at the same time limited territorially, so that he must confine his ministrations to people of this language or nationality or race residing in a certain city or part of a city; *c*) the priest's authority may be at the same time both territorial and personal,—he is given pastoral rights over a certain territory and over certain families in this territory, though simultaneously another parish priest has concurrent jurisdiction over the same territory, but over other families in that territory. The difference between the second and the third class here mentioned is that the third implies jurisdiction over *both persons and territory,* while the second implies no jurisdiction over *territory,* but over *persons* in a determined territory.

In some American dioceses, we find parochial authority of the first class mentioned, *i. e.,* purely personal, when a person is allowed to become a parishioner by having a pew. Thus in Baltimore a person who bona fide hires a whole pew (not one seat) in any church for one year, becomes a parishioner of that church, though he may be domiciled in another parish (IX Syn., n. 16, 23.) A similar practice is sanctioned by the Fifth Synod of New York (n. 65.)

The relations thus created between the parish priest and the parishioner are purely personal, they have no relation to territory, and *in such a case a parish priest may assist at the marriage of his non-territorial parishioner even outside his ordinary parochial limits.*[45]

We have also, in the United States, parochial authority of the second description. Thus the Tenth Synod of Pittsburg (n. 20), speaking of parishes in which languages other than English are spoken, enacts: "Pastores illarum ecclesiarum sacramenta administrare possunt, aliaque omnia pastoris officia peragere iis quorum lingua vernacula Germanica vel alia est, qui intra limites districtus illis commissi morantur." This is, in fact, the almost universal discipline on personal parishes in this country, and it has an important bearing on the validity of marriage, because a *parish priest so appointed can assist validly only within the district given him and only at marriages in which at least one of the parties is subject to him by reason of nationality or language.*[46]

Whether we have parishes of the third class or not it is difficult to say, as the language of local statutes is not always clear on this point, but if such be found, *each parish priest has equal rights, and each can assist validly at any marriage celebrated within the territory over which several have been given concurrent jurisdiction.*[47]

Rectors of religious institutions and chaplains of hospitals, when these institutions or hospitals are exempt from parochial jurisdiction, are powerless to act in marriages unless they have received delegated authority from the Bishop or from the parish priest of the territory in which

[45] S. Cong. Conc., Feb. 1, 1908, ad VII. Appendix B.
[46] S. Cong. Conc., Feb. 1, 1908, ad IX. Appendix B.
[47] S. Cong. Conc., Feb. 1, 1908, ad VIII. Appendix B.

is found the establishment with which they are connected; or unless they have been given full parochial authority in reference to the persons committed to their care, in which latter case they can assist at marriage only in the institution itself and only at marriages in which at least one party is subject to them.[48]

Army chaplains are left in the same position, in so far as assistance at marriage is concerned, in which they were before the *Ne Temere*. In Prussia, in virtue of a brief of Pius IX, May 22, 1868, the chaplains of the army constitute a separate organization, independent of diocesan authority, with an exclusive right to assist at marriage of persons belonging to the army, on delegation from the Capellanus Major. The same condition obtains in Spain. In other countries where delegation by the bishop or parish priest of the locality was formerly required, such delegation will still be necessary.[49]

No explanation of the term Ordinary is given in the *Ne Temere* because its meaning is perfectly clear. Under it are comprised the Pope, Bishops, Vicars and Prefects Apostolic, Vicars Capitular and Administrators of vacant sees, Vicars General, Abbots having separate exempt territory and people. All these officials are, by reason of their office, competent witnesses of marriages within the territory over which they possess jurisdiction, and may delegate others to assist at marriages contracted within that territory.

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[48] S. Cong. Conc., Feb. 1, 1908, ad X. Appendix B.
[49] S. Cong. Conc., Feb. 1, 1908, ad VII.

SECTION III.

MARRIAGE.

A. REQUIREMENTS FOR VALID MARRIAGE.

III. Ea tantum matrimonia valida sunt, quae contrahuntur coram parocho vel loci Ordinario vel sacerdote ab alterutro delegato, et duobus saltem testibus, juxta tamen regulas in sequentibus articulis expressas, et salvis exceptionibus quae infra n. VII et VIII ponuntur.

IV.—Parochus et loci Ordinarius valide matrimonio adsistunt,

§ 1. a die tantummodo adeptae possessionis beneficii vel initi officii, nisi publico decreto nominatim fuerint excommunicati vel ab officio suspensi;

§ 2. intra limites dumtaxat sui territorii: in quo matrimoniis nedum suorum subditorum, sed etiam non subditorum valide adsistunt;

§ 3. dummodo invitati ac rogati, et neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum.

These two articles are by far the most important of the entire decree, for in them are laid down the conditions for a valid marriage. Any violations of the prescriptions here enjoined will entail nullity.

The first condition for validity, and the most fundamental one, is that marriage must be contracted in THE PRESENCE OF THE ORDINARY OF THE PLACE OF CONTRACT OR OF THE PARISH PRIEST OF THAT PLACE, OR OF A DELEGATE EMPOWERED FOR THAT PLACE BY EITHER, AND OF AT LEAST TWO WITNESSES. The only exceptions to this rule are verified in two unusual cases of extreme necessity in which compliance with this Article III is impossible, and these exceptions are fully explained later in Articles VII and VIII.

THE PRIEST WHO ASSISTS AT A MARRIAGE MUST BE THE PARISH PRIEST OF THE PARISH IN WHICH THE MARRIAGE IS CELEBRATED, OR MUST BE A DELEGATE OF THAT PARISH PRIEST OR OF THE ORDINARY; OTHERWISE THE MARRIAGE WILL BE INVALID.

The only requirement as to witnesses is that there shall be two in addition to the *parochus,* present at the contract. All who have the use of reason, however young, may act in this capacity, so far as validity is concerned. Diocesan statutes sometimes forbid certain persons to act, and a decree of the Holy Office declares that heretics and schismatics are excluded, but that the bishop may for grave reasons tolerate their assistance if scandal does not result.[50] But these prohibitions, as is evident, affect the licitness and not the validity of marriage.

The second condition for validity is that the parish priest or Ordinary, who assists or delegates SHALL HAVE TAKEN POSSESSION OF HIS BENEFICE or, in places and cases where he has no benefice, that he SHALL HAVE ENTERED UPON THE DUTIES AND RIGHTS OF HIS OFFICE.

In countries where parishes are benefices, while the benefice is really obtained at the time when it is conferred,

[50] S. Off., Aug. 19, 1891.

the rights attaching to the benefice can be enjoyed only as soon as possession is taken, and among these rights is the right to assist at marriages.[51] The manner of taking possession varies in different places and is usually regulated by statute or custom.[52]

In the United States, there are no benefices and no ceremony of induction, and possession of a parish is taken in an informal way, though it is necessary before the incumbent can begin to act as a parish priest or receive the revenues of his office. The time when a newly appointed parish priest here begins to be a competent witness of marriage and empowered to delegate, is when he enters on the duties of his office, and this will regularly be as soon as he sets foot on the territory of his parish after receiving his letters of appointment.

Once possession is taken, the competency thus acquired ceases, according to the *Ne Temere,* only in two cases, both of which will be extremely rare, (*a*) when the parish priest is publicly and by name declared excommunicated, (*b*) when, also publicly and by name, he is declared suspended from his office. The suspension therefore which brings about this disability is not a suspension from a parish or benefice or from orders alone, but, as the law declares, *ab officio,* that is from all spiritual power, both of orders and jurisdiction. Nevertheless, if a decree, mentioning the name of the parish priest, be published, declaring him suspended, but not specifying the nature of the suspension by a reference to orders or jurisdiction or office, it will have to be regarded as general in its effects and therefore as suspending from office and incapacitating for assistance at marriage.[53]

[51] Wernz, *Jus Decretalium,* II, n. 448.
[52] Leurenius, *Forum Beneficiale,* Pars II, q. 804.
[53] Lega, *De Judiciis,* III, p. 233; Reiffenstuel, V, 39, n. 171.

It is unnecessary to add that deprivation or loss of one's parish by operation of law or by a judicial decree of transfer will terminate competency and render invalid marriages attempted before one so deprived or transferred.

In doubtful cases, the existence of *error communis* will always furnish assurance of validity, certainly when the putative parish priest has a *titulus coloratus,* and probably even when such title is lacking.[54]

A third condition for validity, and the one which essentially differentiates the *Ne Temere* from the *Tametsi,* empowers THE PARISH PRIEST OR ORDINARY TO ASSIST ONLY WITHIN THE LIMITS OF HIS OWN TERRITORY but within these limits HE CAN WITNESS THE MARRIAGE OF ANY PERSONS WHETHER THEY BE HIS SUBJECTS OR NOT.

A marriage therefore, whoever be the contracting parties, which is celebrated before the parish priest of the place [55] and two witnesses will be *valid.* (The conditions for *licitness* are laid down in Article V.)

This long desired innovation will remedy the inconveniences and difficulties which flowed from the *Tametsi.* That law, at least as interpreted, had required the presence or the permission of the *proprius parochus* as a condition for *validity,* and it was this requirement which had proved an inexhaustible source of nullities and litigations. By the *Ne Temere* the validity of marriage is made a matter of easy discernment. It is no longer necessary to discuss the difficult questions of domicile or quasi-domicile, of journeys *in fraudem legis,* of *loca exempta* and *non exempta.* Invalid marriages formerly so easily verified, now become practically impossible for Catholics who desire to abide by the laws of the Church.

[54] Gasparri, *De Matrimonio,* II, n. 1082.

[55] Or a priest delegated for the parish in which the marriage takes place.

The fourth and last condition for validity, is that THE WITNESSING PRIEST MUST ASSIST FREELY AFTER BEING INVITED TO BE PRESENT, AND MUST REQUEST AND RECEIVE THE MATRIMONIAL CONSENT OF THE CONTRACTING PARTIES.

With the operation of this clause, the old surprise marriages, which furnished so often an exciting incident of a novel or an interesting paragraph in our newspapers, disappear forever. They were utterly incompatible with any idea of reverence for the Sacramental character of marriage, but they were perfectly in conformity with the letter of the *Tametsi,* which demanded only that the parish priest and two or three other persons should witness the exchange of consent. However unwilling they might be, even if the parish priest were detained by force or intimidated by threats, however they might strive to close eyes and ears to knowledge of the contract, the marriage entered into in their presence would be valid if they actually knew that a marriage was being contracted.

A classical instance of such a marriage was that of Prince Charles of Brandenburg, and the Countess de Salmur in 1695.[56] At a banquet to which the parish priest had been invited, the Prince and Countess arose and took each other for husband and wife. The parish priest protested, and later the newly married parties, to dispose of any possible doubts, appointed two procurators who on the feast of St. John the Baptist repaired to the Cathedral at an hour when the Vicar General was celebrating Mass. These agents, when the Vicar General turned to say *Orate Fratres,* called on him and on all those present and especially on three designated witnesses to testify that in the name of the Prince and Countess they entered into a contract of marriage. Then throwing on the altar their letters of attorney, they left the Church.

[56] Pallottini, Collectio Conclusionum S. Cong. Conc., XIII, p. 281.

The marriage was declared valid by the Congregation of the Council, but it is clear that here was a practice which might very properly not only be reprobated but rendered absolutely impossible.

These marriages were much more frequent than was desirable, and when the Congregation of the Council, on May 20, 1905, determined to undertake the reform which has resulted in the *Ne Temere,* it made exclusion of surprise marriages one of the basic ideas of its work, and reference to them recurs in every preliminary project of the new law.

The priest who witnesses a marriage must now be invited to assist, but an implicit invitation suffices;[57] his presence must not be secured forcibly or by threats; he must ask the parties whether they take each other as husband and wife and receive an affirmative answer to his inquiry; and as all these conditions are required for validity, a marriage against the will of the assisting priest is no longer possible.

B. REQUIREMENTS FOR LICIT MARRIAGE.

V.—LICITE AUTEM ADSISTUNT,

§ 1. CONSTITO SIBI LEGITIME DE LIBERO STATU CONTRAHENTIUM, SERVATIS DE JURE SERVANDIS;

§ 2. CONSTITO INSUPER DE DOMICILIO, VEL SALTEM DE MENSTRUA COMMORATIONE ALTERUTRIUS CONTRAHENTIS IN LOCO MATRIMONII;

§ 3. QUOD SI DEFICIAT, UT PAROCHUS ET LOCI ORDINARIUS LICITE MATRIMONIO ADSINT, INDIGENT LICENTIA PAROCHI VEL ORDINARII PROPRII ALTERUTRIUS CONTRAHENTIS, NISI GRAVIS INTERCEDAT NECESSITAS, QUAE AB EA EXCUSET.

[57] S. Cong. Conc., March 28, 1908, ad IV, Appendix B.

§ 4. QUOAD *vagos,* EXTRA CASUM NECESSITATIS PAROCHO NE LICEAT EORUM MATRIMONIIS ADSISTERE, NISI RE AD ORDINARIUM VEL AD SACERDOTEM AB EO DELEGATUM DELATA, LICENTIAM ADSISTENDI IMPETRAVERIT.

§ 5. IN QUOLIBET AUTEM CASU PRO REGULA HABEATUR, UT MATRIMONIUM CORAM SPONSAE PAROCHO CELEBRETUR, NISI ALIQUA JUSTA CAUSA EXCUSET.

The simple directions of Article IV, intended to assure the *validity* of marriage, are in this present Article V surrounded with certain safeguards which are insisted on not for validity but for *licitness,* but which are of grave obligation and which consequently cannot be neglected without grave sin. They are intended to promote good order, to prevent conflicts of jurisdiction, and particularly to prevent the possibility of marriage of persons detained by some impediment. Article V then, indicates certain rules which must be observed, but violation of which will not void a marriage.

The first requirement for licit marriage IS THAT THE PARISH PRIEST (OR ORDINARY) SHALL CONVINCE HIMSELF OF THE ABSENCE OF IMPEDIMENTS, THAT IS OF THE *status liber* OF BOTH THE CONTRACTING PARTIES. *Status liber* here means freedom from impediment and especially from the impediment of *ligamen.* Regarding the method of proving the *status liber,* a notable contradiction exists between the common law of the Church and the general practice outside of some districts in Italy. Various instructions of the Holy Office require the sworn testimony of two witnesses before the Ordinary or his delegate, and allow marriage only after the Ordinary or his delegate has given a permit for the ceremony; in addition, if one of the parties has, after reaching the age of puberty, lived in different dioceses long enough to incur an impediment, the

Ordinaries of those dioceses must testify to the absence of impediments, and only when it is impossible to secure this testimony will the *juramentum suppletorium* be received in its stead.[58]

The general practice, however, is to prove the *status liber* of the parties by their sworn declaration, or by the testimony of the parish priest, except when doubt arises concerning the death of a former husband or wife, when recourse must be had to the Ordinary. This practice is certainly at variance with explicit, general law, but its customary employment seems to justify its retention. The Congregation of the Council, to a recent inquiry whether the *Ne Temere* had abrogated the law of 1670, answered "Servetur solitum,"[59] which implies an approbation of existing custom.

In view of the diversity of practice existing at the present day, and especially the insufficient means employed in some localities, it would seem that an instruction is desirable on this important subject. In the meantime the usages of each diocese furnish the only practical guide.

The sole reference in the Plenary Councils of the United States to proof of the *status liber* is found in the second Plenary Council, par. 328, where the Ordinary is declared to be the only competent judge when doubt exists to *obitu conjugis*. This rule is repeated frequently in diocesan synods (*e. g.,* IV New York, n. 8; II Trenton, n. 128; I Springfield, n. 119; Alton, n. 179; II Dubuque, n. 109; VII Detroit, n. 35). As to other cases in which liberty is to be demonstrated, a few synods are entirely silent. All those which do refer to the matter place the burden of

[58] See documents in Gasparri, II, p. 480 ss.

[59] S. Cong. Conc., Feb. 1, 1908, ad XI. Appendix B.

inquiry on the parish priest, and a number emphasize his obligations when a dispensation from the banns has been obtained (*e. g.,* III Brooklyn, n. 186; IV Boston, n. 182; IV St. Louis, n. 94, 104; V Green Bay, G. 13; II Dubuque, n. 105; I Springfield, n. 123; I Alton, n. 174; II Trenton, n. 129; II San Antonio, n. 9; IV Los Angeles, n. 28; X Pittsburg, c. 5, n. 19; I Omaha, n. 128; II Portland, n. 101; III Hartford, n. 121; III Cincinnati, n. 91; VIII Newark, n. 84; I Syracuse, n. 174). A frequently recurring statute takes account of persons who come from a distance; these are obliged to furnish (to the parish priest) proofs of liberty, that is testimonial letters from *the last place in which they had a domicile or quasi-domicile,* or the sworn declaration of witnesses; or if neither of these can be secured, the sworn declaration of the contracting parties that they are free from impediment must be taken (*e. g.,* II Dubuque, n. 106; I Alton, n. 175; III Chicago, n. 188; IV Boston, n. 143). According to instructions given by the Propaganda,[60] this rule is to be applied with special diligence to Italians who come to America after reaching their fourteenth year. The Second Synod of Portland (n. 101) furnishes a rare example of a general provision that whenever the persons to be married are unknown to the priest, he must oblige them to prove their fitness by letters from their own parish priest, or by the sworn testimony of lay witnesses. Equally rare is the instruction found in the Second and Third Synods of Cincinnati indicating to the priest the lines which the inquiry must follow (II, p. 64, III, p. 129). A few synodal decrees wisely direct the priest to see that the marriage be not contracted in violation of any law of the state (II Trenton, n. 129; I Omaha, n. 128; IV St.

[60] July 15, 1893. See Eighth Synod of New York, n. 3.

Louis, p. 94; VIII Newark, n. 84). It is evident from the above that with us the parish priest is left in many cases to his own zeal and discretion, too often with little assistance or direction from positive legislation.

The second requirement for licit marriage is that AT LEAST ONE OF THE CONTRACTING PARTIES SHALL HAVE EITHER A DOMICILE OR A RESIDENCE OF ONE MONTH IN THE PLACE IN WHICH THE MARRIAGE IS CELEBRATED. The *Tametsi* discipline began with a recognition of *domicile* alone as a means of determining subjection to a parish priest in reference to marriage. The meaning of the term *domicile* was clear from the beginning; in fact it already had an ancient history in both civil and canon law,—it meant residence in a place with the intention of remaining there perpetually. This signification has not been changed by the *Ne Temere,* and therefore one who has established his abode permanently in a parish, becomes a subject of the rector of that parish in reference to licit marriage from the first day when actual residence and the intention of remaining permanently are verified conjointly.

But for a definite, generally recognized idea of *quasi-domicile* we have to await several centuries of development, beginning with the last years of the sixteenth century and ending only in the last half of the nineteenth. To realize how far the authorities of the sixteenth century were from recent notions concerning *quasi-domicile,* one has only to read Sanchez [61] or Fagnanus,[62] especially the latter who champions a view of *quasi-domicile* which did not prevail later in ecclesiastical jurisprudence. By degrees it came to be taught and recognized that *quasi-domicile* was acquired by actual residence in a place with the intention of remaining there for the greater part of the

[61] *De Matr.* L. III, disp. 23. [62] In Cap. Significavit.

year; but a faulty interpretation of some earlier decrees of the Rota and of the Congregation of the Council led to a contrary practice in certain localities. Thus the Councils of Rheims (1849) and Rouen (1850) required only a simple residence of fact for six months without any inquiry as to the intention of residing *per majorem anni partem,* and the Council of Clermont (1850) declared the simple fact of residence for one month to be sufficient.[63] A decision of the Holy Office, June 7, 1867, definitively determined the law in regard to the necessity of an intention of residing for at least six months, but this definition was confronted continually with practical difficulties for which it afforded no solution. It was so difficult and even impossible in many cases to prove the intention of remaining in a parish for the required time, that the Fathers of the Third Plenary Council obtained from the Holy See, May 12, 1886,[64] a declaration that residence of one month in any locality would be conclusive proof of *quasi-domicile;* although a similar petition of Bishop Grant of Southwark had been refused by the Propaganda in 1859.[65] In other countries, especially in large cities with their continually shifting population the common law requirement of an intention of remaining for at least six months proved a frequent menace to the validity of marriage, and in 1898 the Archbishop of Paris obtained from the Congregation a special indult by which residence of fact for six months in a parish of Paris would give a *quasi-domicile.*[66] In 1905 the same prelate secured the application to his diocese of the concession made in 1886

[63] Boudinhon, *Le Canoniste Contemporain,* XVI, p. 577.

[64] *Nouvelle Revue Theologique,* xix, p. 468; Sabetti, *Theol. Moralis,* p. 702.

[65] Synodi Southwarcenses, p. 47.

[66] *Acta Sanctae Sedis,* xxxi, p. 404.

to the United States, and the same privilege was at the same time allowed to the Archbishop of Breslau.[67]

The notion of *quasi-domicile* therefore had scarcely been correctly determined when it began a new evolution towards that discipline which had been sanctioned first in the United States, that is mere residence for one month. The final stage of this evolution, canonized in the *Ne Temere,* offers an easy and certain remedy for all the inconveniences of the old system. All that is now necessary is residence of one of the parties in a parish for one month. No inquiry has to be made as to the intention of remaining for the greater part of the year, and consequently *quasi-domicile* disappears from matrimonial law and procedure.[68] Most important of all is the consideration that neither domicile nor residence for one month is necessary in any case for *validity.*

The law speaks of domicile or residence IN LOCO, not IN PAROCHIA, but the existing discipline of the Church allows no other interpretation of this word *locus* than that which makes it identical with *parochia.* In 1898 the Archbishop of Paris asked the Holy Office to recognize *diocesan* domicile, but the Congregation refused to admit any domicile save that established in a parish.[69] The fact that while the preparation of the *Ne Temere* was in progress, Monsignor Lombardi urged that the new law admit diocesan domicile,[70] and that no step was taken in that direction, only confirms the view expressed by the Congregation in 1898 and held by all canonists.

The third requirement for licit marriage is that WHEN AT LEAST ONE OF THE PARTIES TO BE MARRIED IS NOT SUB-

[67] *Acta Sanctae Sedis,* xxxviii, p. 208.
[68] S. Cong. Conc., March 28, 1908, ad V. Appendix B.
[69] Nov. 12, 1898; *Ecclesiastical Review,* xx, p. 413.
[70] *Acta Sanctae Sedis,* xl, p. 548.

JECT BY DOMICILE OR RESIDENCE TO THE PRIEST WHO IS TO WITNESS THE MARRIAGE, PERMISSION MUST BE OBTAINED FROM THE PARISH PRIEST OR ORDINARY TO WHOM AT LEAST ONE OF THE PARTIES IS SUBJECT.

Under the *Tametsi,* failure to comply with this requirement rendered marriage invalid: now in case of such failure, a grave sin will be committed, but THE VALIDITY OF MARRIAGE CANNOT BE QUESTIONED IF IT BE CONTRACTED BEFORE THE PARISH PRIEST OR ORDINARY OF THE PLACE OF CONTRACT, OR OF A PRIEST DELEGATED BY EITHER OF THESE FOR THE TERRITORY IN WHICH THE MARRIAGE TAKES PLACE. Here again is a regulation which relieves priests and people from the many dangers to which the old prerogatives of the *parochus proprius* exposed them.

In the United States this paragraph of the *Ne Temere* will find a ready field in which to operate, for here local legislation has long insisted on the sacred observance of parochial rights in regard to the sacrament of marriage. In almost every synod is found an enactment that marriage shall be witnessed by a priest of whom at least one of the parties is a parishioner, and some synods expressly require the priest who is about to assist at marriage to interrogate the parties as to their domicile, and decree suspension as a penalty for intrusion (IV Boston, n. 56; IV St. Louis, n. 96; I Springfield, n. 9; I Hartford, n. 44.)

The *Ne Temere* allows a parish priest or Ordinary or a priest delegated by either, to marry the subjects of another priest or Ordinary without permission *when there is a grave necessity for proceeding at once with a marriage.* The necessity which excuses this exceptional action must be not merely *reasonable* but *grave,* such as exists not only when one of the parties is in danger of dying before

permission can be obtained, but also when a speedy marriage is the only means of preventing scandal, otherwise imminent and inevitable, or of preventing serious suffering or injury.[71]

The fourth requirement for licit marriage regards a special class known as *vagi,* that is those who have not a domicile or a residence of one month in any parish, and FORBIDS ANY PARISH PRIEST TO ASSIST AT THEIR MARRIAGES, EXCEPT IN CASE OF REAL NECESSITY, WITHOUT SPECIAL PERMISSION IN EACH CASE FROM THE ORDINARY OR FROM A PRIEST DELEGATED BY THE ORDINARY TO GRANT SUCH PERMISSION.

This law, which already governs those dioceses in the United States which are subject to the *Tametsi,* is borrowed from Trent, XXIV, 7, *de. ref. matr.* The wisdom and necessity of such a regulation are evident. Especial care must be taken in such marriages to avoid an attempt at union in the face of an impediment, and to ensure a diligent examination of all the circumstances of the case. The Ordinary mentioned in this paragraph is the Ordinary of the place in which the marriage is to be contracted, and he may delegate one or several priests to examine and decide on the advisability of permitting marital union of *vagi.* Recourse to the Bishop or his delegate is not necessary when there is a real necessity of concluding the marriage at once. Gasparri, following the doctrine of St. Alphonsus and Sanchez, holds that the term *vagi* does not apply to those who abandon a parish in which they have been settled and take up a temporary abode in another parish of the same locality, because the residence of such cannot be said to be uncertain nor can they be said to be unknown in that place.[72]

[71] See II Syn. of Dubuque, n. 10; II Omaha, 24; X Pittsburg, n. 17.
[72] Gasparri, *de Matrimonio,* II, n. 1090.

The fifth requirement for licit marriage provides that A MARRIAGE SHALL BE CELEBRATED BEFORE THE PARISH PRIEST OF THE BRIDE, UNLESS SOME JUST CAUSE AUTHORIZES MARRIAGES BEFORE THE PARISH PRIEST OF THE GROOM.

This rule was suggested to the Consultors of the Congregation of the Council by a parish priest as a means of preventing needless rivalries and contentions, and also of facilitating investigation of matrimonial registers. It represents the discipline which prevailed commonly throughout the Church before the promulgation of the *Ne Temere.* Altogether exceptional was the rule in force in the diocese of Brixen, in Austria,—"Ubi sponsa ibi sponsalia; ubi sponsus ibi nuptiae." [73]

It is to be noted that the law allows marriage in the parish of the groom for *just cause.* Here it is not necessary therefore to demonstrate a *gravis necessitas,* such as is demanded when the law of domicile is disregarded (Art. V, par. 3); any good reason, satisfactory to the *parochus sponsae* or to the bishop, will suffice. The *parochus sponsae* may be the parish priest either of the district where the bride has a domicile or of the locality in which she has resided for one month.

In the United States up to the present time the *written law* of most dioceses has given no preference to either *sponsus* or *sponsa,* when the *contrahentes* belong to different parishes (*e. g.,* IV Boston, n. 146; I St. Louis, n. 10; II Dubuque, n. 104; I Alton, n. 183; II Portland, n. 106; III Chicago, N. 195; Pittsburg, n. 19; III Brooklyn, n. 188; Green Bay, p. 30, n. 2; VII Detroit, n. 34). The new regulations of the Archdiocese of New York (p. 7) declare that the practice formerly sanctioned

[73] Aichner, *Compendium Juris Ecclesiastici,* p. 680.

by the synodal statutes can no longer be followed. The Sixth Synod of Trenton (n. 132) after giving to both parish priests equal rights, declares that it is becoming that the marriage be celebrated in the parish of the bride. Some synods expressly order that the marriage be celebrated by the *parochus sponsae* (*e. g.,* III Providence, n. 81; Omaha, n. 97; IV St. Louis, n. 97; II Hartford, n. 112).

When it is a question of a *mixed marriage,* the synodal laws at present in force represent two opposite tendencies. When the woman is a non-Catholic, some diocesan regulations *permit* the celebration of marriage in the parish in which she resides (*e. g.,* III Chicago, n. 195; II Trenton, n. 133; IV Boston, n. 146; III Brooklyn, n. 195; Alton, n. 183; Pittsburg, n. 19; IV St. Louis, n. 123). Others expressly command that the marriage shall always take place in the parish of the Catholic party (*e. g.,* II Portland, n. 106; III Providence, n. 81; Fall River, n. 97; IV Los Angeles, n. 32).

Although the *Ne Temere* says that regularly the marriage shall be celebrated before the parochus sponsae in quolibet casu, it could hardly be maintained successfully that the legislator intended to confer any exclusive right on the parish priest of the bride when she happens to be a non-Catholic. For this present law affects Catholics alone; they alone can according to its terms acquire a *parochus* by domicile or residence; and a non-Catholic *sponsa* has not a *parochus* in the sense of the paragraph which we are considering. In mixed marriages therefore we really have no *parochus sponsae,* and the only *parochus* with any legal standing is the *parochus sponsi.* Any other parish priest, to assist licitly, needs permission from him or from the Ordinary. It is not necessary to

add that in many cases good reasons will exist to justify the granting of such permission by the Ordinary, if the parish priest urges his claims unreasonably.

C. DELEGATION.

VI.—PAROCHUS ET LOCI ORDINARIUS LICENTIAM CONCEDERE POSSUNT ALII SACERDOTI DETERMINATO AC CERTO, UT MATRIMONIIS INTRA LIMITES SUI TERRITORII ADSISTAT.

DELEGATUS AUTEM, UT VALIDE ET LICITE ADSISTAT, SERVARE TENETUR LIMITES MANDATI, ET REGULAS PRO PAROCHO ET LOCI ORDINARIO N. IV ET V SUPERIUS STATUTAS.

According to a previous article (Art. V, par. 3), a parish priest who wishes to marry *in his own parish* the subjects of another parish priest, must secure *permission* from the latter. This permission is not necessary for validity but for licitness, because a parish priest can assist validly at the marriage of anyone so long as he remains in his own territory. That regulation of Article V, par. 3, applies also to the Ordinary or to a delegate of the Ordinary or of the parish priest, provided that the delegate assist within the territory for which he has been delegated.

But IN THIS PRESENT ARTICLE VI IT IS QUESTION OF DELEGATION BY THE ORDINARY OR PARISH PRIEST OF SOMEONE WHO OTHERWISE WOULD BE INCOMPETENT, TO ASSIST AT A MARRIAGE CELEBRATED IN THE TERRITORY OF THE DELEGATING AUTHORITY. The delegation must be to A PRIEST, and to a priest SPECIFIED AND DETERMINED IN THE ACT OF DELEGATION. This determination may be affected not only by mentioning the name of the *delegatus,*

but also by describing him by his office, but care must be taken in any act of delegation that some certain person is authorized to act, as otherwise the delegation will be invalid.

THE DELEGATE IS BOUND TO OBSERVE THE DIRECTIONS CONTAINED IN HIS MANDATE. If he is authorized to assist at the marriage of certain specified persons, or at only those marriages contracted during one day or one week or during a period of service at a certain church, or within the limits of a certain parish, disregard of these specifications will entail invalidity. Other directions found in the letter of delegation will be presumed ordinarily to be mere directions and not conditions for validity, although this rule may suffer exception if the contrary intention of the delegator be clearly proved.

THE DELEGATE IS ALSO BOUND BY THE RULES ENACTED IN ARTICLES IV AND V CONCERNING THE PARISH PRIEST AND THE ORDINARY; therefore, *for validity,* he should not be publicly and nominally excommunicated or suspended, he should assist only within the territory of the authority delegating him and within the territory for which he is delegated, he should assist freely, and request and receive the matrimonial consent of the contracting parties: for *licitness,* he should be certain of the *status liber* of both parties, he should also ascertain that one of them at least has a domicile or a residence of one month in the territory of the delegating authority or that the necessary permission has been obtained, and regularly he should be sure that his action is permitted by the *parochus sponsae.* In the case of *vagi,* the delegate can proceed licitly only on permission from the Bishop or his representative. The obtaining of permission to act in the marriages of *vagi,* as also the inquiry *de statu libero,* would seem to devolve

naturally on the delegating priest or Ordinary, since here it is question of facts that must be determined before marriage can be permitted. Moreover, many of our statutes oblige the parish priest to institute the examination as to liberty from impediment. But if these matters have not been attended to, it is clearly the duty of the delegate to care for them.

Priests who act as assistants in parishes usually have faculties to administer all the sacraments, except confirmation and orders, but in such a grant the right to assist at marriages is not included. The only certain means of determining whether a curate in any diocese is a competent witness of a valid marriage is to consult the custom or the particular law of that locality. In the past, in countries in which the *Tametsi* was in force, there seems to have been considerable uncertainty as to whether the right to administer all the sacraments implied the right to witness marriages, but in almost every diocese special delegation was considered necessary.[74] The Holy Office in 1898 [75] decided that the faculty to administer all the Sacraments does not include the right to assist at marriage, except when custom allows this right to curates in the parish where they are ministering, although earlier decisions of the Congregation of the Council and of the Rota had been understood in the sense that permission to administer all the Sacraments included permission to officiate at marriages.[76] If custom does not determine the

[74] See Feije, *De Disp*,, p. 185; Aichner, *Compendium*, p. 685; Gury-Ferreres, *Theol. Moralis*, II, p. 557; Lehmkuhl, II, n. 777; Gasparri, II, n. 108.

[75] *Eccl. Review*, xx, p. 282.

[76] Decisiones Recentiores, 433, n. 11, par. 14; *In Aquinaten*, June 13, 1591; *In Triventina*, April, 23, 1616; *In Nullius*, March 16, 1630.

status of curates, the intention of the Bishop in empowering them will have to be appealed to.

In this country, where we are entering on a new field of law in reference to valid marriage, custom can be invoked in only a few places; and episcopal declarations or enactments will be necessary to determine the power of assistant priests. Some regulations already published on the new law declare that "every assistant priest appointed to parochial work can assist validly at marriages *in the parish to which he has been assigned*" (New York); that "all duly authorized assistant priests have delegation from the Bishop for all matrimonial causes, *within the territory of the parish to which they have been assigned*" (St. Paul); that "assistant priests are delegated to assist at marriages *within the limits of the district to which they are assigned*" (Province of Cincinnati); that "all assistants laboring in the diocese for the care of souls *assist validly at all marriages solemnized under the Archbishop's jurisdiction*" (Boston); but all these regulations require the permission of the rector as a condition for the licit exercise of a curate's power. We are therefore in this country departing from the common practice under the *Tametsi,* but the changed character of the law and its purpose seem to justify such an innovation, provided the permission of the parish priest be always insisted on for *licit* assistance. As is clear from the above quotations from diocesan regulations, the powers of our curates will not be everywhere identical, since in some dioceses they will be able to act validly throughout the diocese, while in other jurisdictions they become incompetent once they leave the territory of the parish to which they have been appointed.

A priest who replaces a sick or absent parish priest *in the care of souls,* becomes thereby competent in matrimonial

matters, and similar competency attaches to the office of administrator of a vacant parish.[77]

It is understood, of course, that in the absence of delegation by the Bishop, the parish priest may delegate to one or all his curates all or a portion of his authority in matrimonial affairs.

An extremely important question and one which might very properly receive attention in regulations determining the rights of curates, refers to THE POWER TO SUB-DELEGATE. The general principle of law which applies here, recognizes the right of a delegate of the Pope to sub-delegate, but denies this right to one delegated by any lower authority, unless sub-delegation has been expressly authorized, or unless the delegation is *ad universalitatem causarum.* Any priest, then, delegated by a Bishop or by a parish priest, will not have a right to commission another priest to witness a marriage unless he has been expressly authorized to do so, or unless he has been constituted a delegate *ad universitatem causarum matrimonialium.*[78] Are our curates *delegati ad universitatem causarum?* The answer to this question depends on the precise nature of the commission which they receive. If they are delegated not only to assist at marriage, but also TO PERFORM IN REFERENCE TO THAT SACRAMENT ALL OF THOSE OFFICES WHICH ORDINARILY FALL WITHIN THE PROVINCE OF A

[77] Rosset, *De Sacr. Matr*, n. 2250; Gasparri, II, n. 1077, 1079, 1080; Wernz, *Jus Decretalium*, IV, n. 176.

[78] "Quis dicatur delegatus ad universalitatem causarum? Talis dicitur quando ei genus causarum committitur sub uno nomine collectivo, quamvis non sit generalissimum, sed subalternum, licet sit restrictum quoad tempus, ut si committantur causae tali anno occurrentes, vel quoad quantitatem, si causae decem librarum et infra, vel quoad locum, ut causae talis loci." Sanchez, *de Matr*, L. III, disp. 31, n. 4.

PARISH PRIEST, the universal character of their delegation is certain, and they have the right to sub-delegate. But when they are empowered MERELY TO ASSIST AT MARRIAGES, they are not delegates *ad universitatem causarum,* and hence cannot communicate their power to another priest.[79] The local regulations quoted above indicate that in some dioceses the intention is apparently to confer on curates simply the right to assist at marriages, while in others a *delegatio ad universitatem causarum* is intended.

When a priest is delegated by a general statute or law, acceptance by him is not necessary to give effect to the delegation, but in other cases the fact that power has been delegated should be known and the grant should be accepted.[80] The simple requirements of the *Ne Temere* for valid marriage deprive this question of acceptance of much of the importance which attached to it, theoretically at least, under the old legislation.

The right to assist at marriages may be delegated not only *expressly,* but also *tacitly.* For this latter form, it is necessary that the Ordinary or the parish priest should know of a ceremony, and nevertheless not oppose it, although such opposition would be easy. It is clear that only real necessity would justify assistance in such circumstances, especially since so reputable an authority as Gasparri regards as somewhat doubtful the value of tacit delegation, and Fagnanus denies it.[81]

Although some consultors favored a prescription requir-

[79] Gasparri, II, n. 1132; Rosset, n. 2249.

[80] D'Annibale *Summula Theol. Moral.,* II, n. 225; Wernz, *Jus Decretalium,* IV, p. 288; Gasparri, II, n. 1130; Rosset, n. 2238; Gury-Ferreres, II, n. 849; Pallottini, XIII, p. 265.

[81] Gasparri, II, n. 1134.

ing written delegation,[82] the Congregation did not deem it wise to change the accepted doctrine on this point and consequently merely oral authorizations are still lawful but not advisable, as they may be difficult to prove and may become a source of serious difficulty.

The view maintained under the *Tametsi* that the parish priest might permit the parties to marry before any priest of their choice is now inadmissible.

Before leaving this matter of delegation, it may be well to call attention again to the important distinction between PERMISSION and DELEGATION to assist at marriage. A priest, within the territory of which he is parish priest, or for which he has been delegated as a competent witness by the parish priest or by the Ordinary, can marry validly any persons who appear before him; and if a parish priest of another parish, or even of another diocese, sends persons to him to get married, the letters which the parties bring are not letters of delegation, but of permission, *i. e.*, letters which are required not for validity, but for licitness.

It is only when a priest is to assist who is not a parish priest and has not received otherwise the necessary authority, or when an Ordinary is to act outside his diocese, or a parish priest outside his parish, or a delegate outside the territory for which he has been empowered, that delegation is required as a condition for validity.

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[82] *Acta Sanctae Sedis*, xl, p. 569.

D. MARRIAGE OF PERSONS IN DANGER OF DEATH.

VII.—IMMINENTE MORTIS PERICULO, UBI PAROCHUS VEL LOCI ORDINARIUS, VEL SACERDOS AB ALTERUTRO DELEGATUS HABERI NEQUEAT, AD CONSULENDUM CONSCIENTIAE ET (SI CASUS FERAT) LEGITIMATIONI PROLIS, MATRIMONIUM CONTRAHI VALIDE AC LICITE POTEST CORAM QUOLIBET SACERDOTE ET DUOBUS TESTIBUS.

An entirely new rule is enacted here for marriage in circumstances which will be extremely rare, but for which the Church, in her capacity as a guardian of the spiritual welfare of her children, feels bound to provide. The nearest approach to this rule in preëxisting legislation was found in a decree of the Holy Office (February 20, 1888) which authorized parish priests on delegation from the Ordinary to dispense, in danger of death, from any impediment except the priesthood and affinity in the direct line *ex copula licita.*

This Article of the *Ne Temere* contemplates not only the moment when the death of one of the parties is known to be actually at hand, but also any time when there can be said to be A PROBABLE DANGER OF DEATH WITHIN A SHORT TIME, or of the unconsciousness which often precedes death. This time must be so brief that IT IS IMPOSSIBLE TO SECURE THE SERVICES OF THE ORDINARY OR OF A PARISH PRIEST OR OF A DELEGATE OF EITHER, OR TO SECURE DELEGATION from a person empowered to grant it. In judging this impossibility, however, it is not necessary to take account of extraordinary means of reaching the Ordinary or the parish priest; all that is necessary is that there be certainty that a regularly authorized priest cannot be secured in time by writing or by a messenger dispatched in an ordinary way. Since use of the telegraph or tele-

phone seems to fall under the head of extraordinary methods, and since telegraphic petitions for dispensations have been reprobated,[83] a marriage will be valid when delegation or the presence of an authorized priest might have been secured by telegraph or telephone, but was not so secured. But at the same time it seems that these means might properly be made use of in so extraordinary a case, especially since the *validity* of delegations by telegraph or telephone cannot be called into question.

In addition, to allow this Art. VII to operate, the case must be one in which MARRIAGE IS NECESSARY EITHER TO SATISFY THE PROMPTINGS OF CONSCIENCE OR TO LEGITIMIZE CHILDREN. Concubinage will furnish most of the cases in which marriage will be demanded *ad consulendum conscientiae,* but unlawful relations which cannot be called concubinary may also at times give rise to the conscientious scruples to which this Article refers. Affection alone, however strong, will not relieve the parties from the obligation of marrying in the ordinary way. The children to be legitimized must not be *spurii,* that is, they must not have been born of adulterous, incestuous or sacrilegious intercourse, or of persons related by blood in the direct line.

When the foregoing conditions are verified, MARRIAGE MAY TAKE PLACE VALIDLY AND LICITLY BEFORE ANY PRIEST AND TWO WITNESSES.

During the preparation of the *Ne Temere,* some consultors desired to facilitate these extraordinary marriages by allowing them to be contracted before any priest having faculties to hear confessions, without witnesses, or even before only one witness, or before two witnesses without a priest,[84] but the Congregation adopted a stricter view.

[83] Secret. Status, Dec. 10, 1891; S. Cong. de Prop. Fide, August 2, 1901.

[84] *Acta Sanctae Sedis,* xl, 565, 570, 573.

The law as it stands guarantees sufficient freedom, and at the same time affords some guarantee against the designs of those who would not hesitate to take advantage of the distressed condition of a dying person in order to secure financial gain. It must be remembered, too, that it is not question here of a means necessary for salvation.

E. MARRIAGE WITHOUT AN AUTHORIZED PRIEST.

VIII.—SI CONTINGAT UT IN ALIQUA REGIONE PAROCHUS LOCIVE ORDINARIUS, AUT SACERDOS AB EIS DELEGATUS, CORAM QUO MATRIMONIUM CELEBRARI QUEAT, HABERI NON POSSIT, EAQUE RERUM CONDITIO A MENSE JAM PERSEVERET, MATRIMONIUM VALIDE AC LICITE INIRI POTEST EMISSO A SPONSIS FORMALI CONSENSU CORAM DUOBUS TESTIBUS.

The preceding Article (VII) contemplated a particular difficulty affecting *individuals*; Art. VIII refers to a condition which is *general* (in *aliqua regione*). IF IN SOME DISTRICT, PARTIES DESIRE TO MARRY AND ARE UNABLE TO SECURE THE PRESENCE OF A DULY AUTHORIZED PRIEST OR OF THE ORDINARY, AND THE DISTRICT HAS BEEN SO CIRCUMSTANCED FOR ONE MONTH PREVIOUS TO THE TIME WHEN MARRIAGE IS DESIRED, MARRIAGE MAY BE CONTRACTED BOTH VALIDLY AND LICITLY BEFORE TWO WITNESSES.[85] The presence of an unauthorized priest contributes in no wise to the validity of the marriage, unless he be one of the two witnesses; but a Congregation deputed to consider the affairs of the French Church at the time of the revolution declared (April 22, 1795) that in such cases

[85] The witnesses should be Catholics, if possible. S. Off., May 15, 1861 to the Archbishop of San Francisco.

it is proper that the nuptial benediction be received if possible from some priest. The parties are bound in any case to receive the nuptial blessing as soon as possible.[86]

This rule is evidently one which will find only rare application, but it is needed in missionary countries and in localities disturbed by war or pestilence. The *Tametsi* discipline made a similar, though not identical concession, recognizing the validity of marriages contracted in the presence of only two witnesses when it was impossible to secure the presence of a priest, and when at the same time it was foreseen that it would be difficult or dangerous to reach him within one month.[87]

It is to be noted that one of the conditions for taking advantage of this concession is that IT BE IMPOSSIBLE TO SECURE THE SERVICES OF THE ORDINARY OR PARISH PRIEST OR OF A DELEGATE OF EITHER. This impossibility existed under the old discipline "*quando facilis ad eosdem et tutus non patet accessus,*" [88] and the same principle must hold good under the *Ne Temere.*

The First Synod of Santa Fe (Paragraph 8, n. 2) contains the following prudent advice concerning marriage without a priest,—

"*Haec exceptio, licet jure naturali fundata, populo promulganda a sacerdotibus nobis non videtur, prae timore ne facile, et forsan sine legitima ratione, multi ea utantur. Attamen, ea de re, suadere possumus ut cum sacerdotes loca remotiora missionum suarum visitant, moneant fideles quod si forte pro aliquibus urgeret necessitas matrimonium ante sequentem visitationem contrahendi, et hi sine gravamine non possent ad parochiam accedere, hoc per litteras manifestent. Quo in casu, respondere poterit sacerdos quod, per-*

[86] S. Off., Nov. 14, 1883; Feije, *De Impedimentis*, p. 837.
[87] I Prov. Council of San Francisco, p. 68. [88] S. Off., Oct. 5, 1793.

pensis rationibus allatis, ex concessione Ecclesiae eis facultatem facit matrimonium contrahendi coram duobus vel tribus testibus, qui sint catholici, et sine ullo ministro, ea tamen conditione ut actum contritionis eliciant et cum copiam habuerint, se suo sacerdoti quamprimum sistant et suam confessionem peragant, ac benedictionem in sanctae missae sacrificio recipiant." With the exception of the passage which seems to imply a special privilege granted by the parish priest, this quotation might well be adopted as a practical rule by the few priests who may have to do with these marriages in the United States.

F. REGISTRATION OF MARRIAGE.

IX.—§ 1. CELEBRATO MATRIMONIO, PAROCHUS, VEL QUI EJUS VICES GERIT, STATIM DESCRIBAT IN LIBRO MATRIMONIORUM NOMINA CONJUGUM AC TESTIUM, LOCUM ET DIEM CELEBRATI MATRIMONII, ATQUE ALIA, JUXTA MODUM IN LIBRIS RITUALIBUS VEL A PROPRIO ORDINARIO PRAESCRIPTUM; IDQUE LICET ALIUS SACERDOS VEL A SE VEL AB ORDINARIO DELEGATUS MATRIMONIO ADSTITERIT.

The Roman Ritual (Title VII, ch. 2) requires that *"peractis omnibus, parochus manu sua describat in libro matrimoniorum nomina conjugum et testium, et alia juxta formulam praescriptam; idque licet alius sacerdos, vel a se vel ab Ordinario delegatus, matrimonium celebraverit."* (See also Trid. XXIV, 1. *de ref. matr.*) This paragraph of the *Ne Temere,* therefore, simply insists on the observance of a long established rule.

IT IS THE PARISH PRIEST WHO MUST MAKE THE ENTRY

ON THE MARRIAGE REGISTER, even when he has not assisted at a marriage contracted within his territory, and he is obliged to enter the record *"statim," i. e.,* as soon as possible after the marriage. Only when he is prevented by sickness or other real disability may another replace him in the discharge of this duty, and then a note should be made that the substitute acted in virtue of a commission received from the parish priest.[89] The phrase *"qui ejus vices gerit,"* does not refer to an assistant priest in a parish, but to the persons mentioned in Art. II, *de sponsalibus.*

The record must mention the names of the contracting parties and of the witnesses, the place and date of the ceremony, and other details required by ritual prescriptions or by diocesan law. The *Ne Temere* also directs the parish priest to adhere to any special *form* of registration prescribed by the Ordinary. In some American dioceses, the names of the parents of the husband and wife are insisted on (*e. g.,* Fall River, n. 187; III Brooklyn, n. 278; II Portland, n. 112); in others a note must be made of dispensations, and of the omission of the banns (*e. g.,* III Brooklyn, n. 278; Fall River, n. 187; IV St. Louis, n. 153). The Second Synod of Hartford (n. 56) expressly requires entry of the *cautiones de matrimoniis mixtis* in the matrimonial register, as a preliminary to mixed marriages.

Too much stress cannot be laid on the correct and careful keeping of the *Liber Matrimoniorum.* It is the only source from which must ordinarily be drawn information concerning marriages which have taken place in a parish, and in fact a marriage is not presumed to have been contracted when no record of it is found in the parish book provided for that purpose.[90] Negligence in this connec-

[89] Gasparri, *De Matrimonio,* II, n. 1279.

[90] Baruffaldus, *Ad Rituale Rom. Comment. Tit.* 92, n. 29.

tion may have most serious and embarrassing consequences, and it was necessary that a new matrimonial law affecting the celebration of marriage should advert to this important detail.

IX.—§ 2. PRAETEREA PAROCHUS IN LIBRO QUOQUE BAPTIZATORUM ADNOTET, CONJUGEM TALI DIE IN SUA PAROCHIA MATRIMONIUM CONTRAXISSE. QUOD SI CONJUX ALIBI BAPTIZATUS FUERIT, MATRIMONII PAROCHUS NOTITIAM INITI CONTRACTUS AD PAROCHUM BAPTISMI SIVE PER SE, SIVE PER CURIAM EPISCOPALEM TRANSMITTAT, UT MATRIMONIUM IN BAPTISMI LIBRUM REFERATUR.

To guard the Sacrament from profanation it is here required that THE MARRIAGE BE RECORDED NOT ONLY IN THE *Liber Matrimoniorum* BUT ALSO IN THE *Liber Baptizatorum*. If both the married persons were baptized in the parish in which the marriage is celebrated, the parish priest of that place, after inscribing the marriage in the matrimonial register, must turn to the records of baptism and there opposite the name of each party note the fact that this person was married on a certain day in this parish. The law does not expressly require mention of the name of the party with whom marriage was contracted but such mention is evidently desirable and it would seem to be supposed.

If the baptism of one or of both parties is recorded in another parish, the parish priest in whose territory the marriage takes place must inform the rector of the baptismal church that this person or these persons have been married, and the recipient of this information must note the fact in the *Liber Baptizatorum* of his church.

The parish priest may make this transmission to another parish by writing directly, or by addressing himself to the *episcopal curia,* which will take charge of the matter. If the parish of baptism be in another diocese, the law does not enlighten us as to whether the *curia* of the place of contract or the *curia* of the place of baptism is the proper medium, and therefore either may be employed, unless a diocesan regulation ordains a preference.

It is not difficult to discern the good effects which these precautions are calculated to produce, or to realize the gravity of the obligation which they impose. The existence of a triple record of the contract will be an almost certain guarantee against the disappearance of proof, and the knowledge that a marriage must be made known in the place of baptism is a very effectual deterrent from bigamy, or at least gives assurance that it will not remain undetected.

IX.—§ 3. QUOTIES MATRIMONIUM AD NORMAM N. VII AUT VIII CONTRAHITUR, SACERDOS IN PRIORI CASU, TESTES IN ALTERO, TENENTUR IN SOLIDUM CUM CONTRAHENTIBUS CURARE, UT INITUM CONJUGIUM IN PRAESCRIPTIS LIBRIS QUAM PRIMUM ADNOTETUR.

The proper recording of all marriages is so necessary that the law prescribes the manner of its performance even in *those rare cases in which marriage must be contracted without observance of the usual formalities.* Art. VII recognizes the validity of a marriage contract, when one of the parties is in danger of dying before a duly authorized priest can be secured, in the presence of any priest and two witnesses. This marriage must be recorded, and THE PRIEST WHO ASSISTS AND THE PARTIES THEMSELVES

ARE BOUND TO HAVE THE RECORD MADE AS SOON AS POSSIBLE IN BOTH THE BAPTISMAL AND MATRIMONIAL REGISTERS.

According to Art. VIII, in places where it has been impossible for one month to secure a duly authorized priest, and he cannot be had at the moment of the ceremony marriage may be contracted in the presence of any two witnesses. THE OBLIGATION TO HAVE THIS MARRIAGE RECORDED RESTS ON THE WITNESSES AND THE CONTRACTING PARTIES, and this obligation also must be satisfied at the earliest possible moment.

In both cases the obligation is styled an *obligatio in solidum,* that is the obligation of each one of the persons mentioned is equal, distinct and complete, having nothing in common with the obligation of the others save origin and method of extinction,[91]— it originated in the matrimonial contract, it will be extinguished by inscription on the proper record. Only when this inscription has been made will all the obliged parties be free.

Formerly when a marriage was celebrated without the presence of a priest, the *contrahentes* were obliged to take care that their marriage was recorded in the register of their mission or of the nearest church.[92]

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[91] Arndts-Serafini, *Trattato delle Pandette,* par. 214.
[92] S. Off., Nov. 14, 1883.

G. PENALTIES.

X.—PAROCHI QUI HEIC HACTENUS PRAESCRIPTA VIOLAVERINT, AB ORDINARIIS PRO MODO ET GRAVITATE CULPAE PUNIANTUR. ET INSUPER SI ALICUJUS MATRIMONIO ADSTITERINT CONTRA PRAESCRIPTUM § 2^1 ET 3^1 NUM. V, EMOLUMENTA *stolae* SUA NE FACIANT, SED PROPRIO CONTRAHENTIUM PAROCHO REMITTANT.

VIOLATION OF ANY OF THE PRESCRIPTIONS OF THE *Ne Temere* MUST BE PUNISHED BY THE ORDINARY. It would have been impossible to fix *a priori* a scale of offenses and penalties, and therefore the proportion between transgression and punishment had to be left to the discretion of diocesan authority, which will take account of the gravity and the frequency of disregard of the law. Some precedent in this matter of punishments can be found in the Council of Trent (XXIV. I, *de ref. matr.*) which inflicted a suspension *ipso jure* on a priest who dared to marry non-parishioners without the consent of their parish priest, and ordered that a priest who attempted to assist at a marriage without the required number of witnesses should be severely (*graviter*) punished. Some American diocesan synods also inflicted suspension for the marriage of another's parishioners, sometimes *latae sententiae* (IV St. Louis, n. 96), sometimes *ferendae sententiae* (IV Boston, n. 56).

A special provision of this Art. X, which naturally finds its place under the head of penalties, declares that when a parish priest marries the subjects of another priest without permission and without necessity, he loses all right to the offerings made on the occasion of the marriage, and is obliged to transmit them to the *proprius parochus contrahentium*. According to Art. V, paragraph 5, the *pro-*

prius parochus for marriage is the *parochus sponsae,* and it is to him that the stipend should be sent. However a difficulty may arise if the bride has one or two parish priests by reason of domicile and another by reason of residence in a parish for one month, and for the solution of this difficulty, since the *Ne Temere* is silent, recourse must be had to special diocesan regulations. In the absence of these, it is perhaps possible to maintain that the parish priest of domicile ought to be preferred to the priest in whose parish the bride has simply resided for one month, but the *Ne Temere* does not justify such a preference.

Since the *non-parochus* is bound to restore the stipend only when he acts without permission or without grave necessity, it is clear that the law supposes that permission granted to an extern parish priest, authorizing him to assist at a marriage of persons who are not his subjects gives him a right to the offerings on the occasion of marriage. It is only when he acts unlawfully that he is affected by the rule, "*emolumenta stolae sua ne faciant.*"

Our present diocesan laws all insist on this requirement of the *Ne Temere,* and in substantially the same language as that employed in this decree. Some statutes simply assert the obligation to restore (II Portland, n. 55; IX Baltimore, n. 15; II Dubuque, n. 10; II Omaha, n. 24); others declare that restitution is required *titulo justitiae* (IX Boston, n. 56; III Cincinnati, n. 201, 202; I Springfield, n. 46; V New York, n. 65; III Chicago, n. 79; Green Bay, p. 13).[93] The most detailed law concerning marriage offerings is found in the Fourth Synod of Los Angeles, n. 33,—

"Emolumenta, conjugii occasione recepta contra-

[93] Some require restitution even when permission has been received from the *proprius parochus* (*e. g.*, Green Bay, p. 13).

hentium rectori remittat, *quinta parte* sibi retenta. Si vero ad duos rectores pertineant contrahentes, *utrique dimidietatem dabit,* sibi ut supra quinta parte retenta. Quod si eos jungat inconsulto Ordinario, omnia eorum rectori mittenda sunt, nihil sibi retento." This statute furnishes a rare example of provision for the case in which two rectors have rights over the married persons.

H. SUBJECTS OF THE LAW.

XI.—§ 1. STATUTIS SUPERIUS LEGIBUS TENENTUR OMNES IN CATHOLICA ECCLESIA BAPTIZATI ET AD EAM EX HAERESI AUT SCHISMATE CONVERSI (LICET SIVE HI, SIVE ILLI AB EADEM POSTEA DEFECERINT), QUOTIES INTER SE SPONSALIA VEL MATRIMONIUM INEANT.

The *Ne Temere* affects Catholics, that is those who have been BAPTIZED IN THE CATHOLIC CHURCH and also those who have been CONVERTED TO THE CHURCH FROM HERESY OR SCHISM, even if these converts have previously been baptized. And one who becomes a Catholic either by baptism or by conversion remains always a Catholic in so far as subjection to the *Ne Temere* is concerned. Subsequent apostasy or perversion will not exempt from the law.

This is a serious divergence from the old interpretation of the term " Catholic,' which did not comprise those who, baptized in the Catholic Church, had been subjected while children to perverting influences and had grown up as non-Catholics, or those who had in later life apostatized and joined some heretical sect. These, in reference to marriage, were regarded as non-Catholics.[94]

[94] S. Off. to the Bishop of Harlem, April 6, 1859.

Since the publication of the *Ne Temere,* the Archbishop of Cologne in the name of all the bishops of Germany presented to the Holy See an earnest petition that the old discipline in this connection might be maintained in Germany under the *Ne Temere,* or that a special dispensation might be granted to that effect,[95] but the Congregation replied in the negative to both these petitions and ordered the observance of the *Ne Temere.*[96]

That the phrase "*omnes in catholica ecclesia baptizati*" includes all Latin Catholics is evident. But what is to be said of the numerous body of Greek Catholics? Are they subject to the provisions of the *Ne Temere*? This question has a serious practical importance in some sections of our country where Orientals are found in considerable numbers, and may demand solution in isolated cases in any parish. No explicit mention of Catholics of the Oriental rites is made in the present law. Are they implicitly included inasmuch as they can be said to be baptized in the Catholic Church? A negative answer is the only one possible. For it has long been universally held that the Orientals are not affected by papal laws unless (*a*) it is question of matters of faith or dogma; (*b*) unless the subject-matter of the law demands that they be comprised, inasmuch as the law is not a purely ecclesiastical ordinance, but rather a declaration of divine and natural law; (*c*) unless the members of the Eastern Churches are expressly mentioned. Though this doctrine has never been expressly sanctioned by the Holy See, it is taught by all theologians and canonists, and is acted on by the Orientals.[97] Now, the *Ne Temere* does not propose any dogmatic teaching nor does it expressly men-

[95] *Acta Sanctae Sedis,* xli, p. 106.
[96] S. Cong. Conc., Feb. 1, 1908.
[97] S. Cong. de Prop. Fide, Nov. 8, 1882.

tion the Greeks, nor finally does it enact a regulation the matter of which necessarily demands that the Greeks be affected. The Congregation of the Council simply adhered to the common teaching when it declared in answer to doubts that had been raised after the promulgation of the *Ne Temere* as to the form of Greek marriages, that Catholics of any Oriental rite are not held to an observance of the new regulations.[98]

Greek or Oriental Catholics, then, are exempt, but if a Latin Catholic marries an Oriental Catholic, the marriage to be valid must be contracted according to the new law.[99]

XI.—§ 2. VIGENT QUOQUE PRO IISDEM DE QUIBUS SUPRA CATHOLICIS, SI CUM ACATHOLICIS SIVE BAPTIZATIS, SIVE NON BAPTIZATIS, ETIAM POST OBTENTAM DISPENSATIONEM AB IMPEDIMENTO MIXTAE RELIGIONIS VEL DISPARITATIS CULTUS, SPONSALIA VEL MATRIMONIUM CONTRAHUNT; NISI PRO ALIQUO PARTICULARI LOCO AUT REGIONE ALITER A S. SEDE SIT STATUTUM.

Marriages or engagements to marry must conform to the provisions of the *Ne Temere* not only when both of the parties are Catholics, but also WHEN ONE IS A CATHOLIC AND THE OTHER A BAPTIZED OR UNBAPTIZED NON-CATHOLIC. Nor does the fact that a dispensation has been obtained from the impediment which exists between Catholics and non-Catholics imply any exemption from the prescriptions as to valid or licit marriage and *sponsalia*. This paragraph disposes of the theory of *individuitas contractus,*

[98] S. Cong. Conc., Feb. 1, 1908.
[99] S. Cong. Conc., March 28, 1908.

which held sway especially since the time of Benedict XIV, and which allowed the exemption of one of the parties to confer exemption on the other.

There is nothing unreasonable in such a regulation as is enacted here. A Catholic is bound by the laws of his Church, and among these laws none is more reasonable than that which requires that marriage should be contracted in a holy manner, with the sanction of the official representatives of the Church. Most mixed marriages will be celebrated and are celebrated properly, and only comparatively few Catholics will affront decency and religion by vulgar or sacrilegious proceedings. The number of such offenses will surely diminish if the present law is preached, and its nullifying effects and its reasonableness brought to the attention of all children of the Church.

It must be acknowledged, however, that this decree on mixed marriages has provoked serious remonstrances from bishops of certain countries, especially those subject to the Propaganda.[100] The Archbishop of Westminster for example, informed the Congregation that if this particular law were applied in England, numerous and serious difficulties would result; and other prelates declared that in their jurisdictions no advantage would accrue to souls or to the Church if excessive rigor were displayed towards mixed marriages, but that on the contrary such rigor would tend to turn minds away from Catholicism.

At the same time curiously enough, other bishops like Bishop Drehmans, of Roermond (in Holland),[101] petitioned that every exemption, of whatsoever nature, be denied. The Congregation refused to recede from the position taken in the *Ne Temere*.

[100] *Acta Sanctae Sedis*, xli, p. 101 ss. [101] *Ibidem*, p. 99.

Much doubt surrounded for a time the meaning of the clause "*nisi pro aliquo particulari loco aut regione aliter a Sancta Sede sit statutum.*" Some were ready to see therein a promise of special dispensations to be granted in the future, but this opinion contradicted the grammatical significance of the Latin text, and it was based on the peculiar supposition that the law at the moment of its formulation made an unnecessary promise of future indults of exemption. The common, and the only admissible view, took this clause to refer to exemptions already granted. That one such exemption was to be found in the Constitution *Provida,* granted by Pius X to Germany in 1906, no one doubted. But as to the effect of the *Ne Temere* on the Benedictine Declaration and special concessions such as had been made to certain countries like Ireland and Hungary, opinion was divided. Some went so far as to say that wherever mixed marriages, contracted in violation of the prescriptions for Catholic marriages, were valid before the *Ne Temere,* they would continue to be valid even after that law took effect.[102] More commonly however a distinction was made between the Benedictine Declaration and other concessions, and only these latter were believed to remain in force, the reason for this distinction being that the Benedictine Declaration was, as its name implied, merely a declaration of the *Tametsi* and hence must disappear with it, while other grants were independent of the Tridentine law and therefore were real *statuta a Sancta Sede pro locis particularibus.*[103] This view was maintained by Archbishop Pompili, now Secretary of the Congregation of the Council, to whom the Congregation committed the study of this

[102] Boudinhon, *Le Mariage et Les Fiancailles,* p. 97.

[103] Many bishops, however, believed that the Benedictine Declaration had not been abrogated. A. S. S. XLI, p. 101.

important question. The Congregation put an end to all doubt by declaring that under the *Ne Temere* only the Bull *Provida* remains in effect, which recognizes the validity of mixed marriages contracted in Germany by persons born in that country, when those marriages are not celebrated according to the form prescribed for Catholics.[104] Germany consequently is the only country in which an exception has been allowed by the Holy See for mixed marriages.

Whether similar exceptions will be made for other countries is for ecclesiastical authority to decide.

XI.—§ 3. ACATHOLICI SIVE BAPTIZATI SIVE NON BAPTIZATI, SI INTER SE CONTRAHUNT, NULLIBI LIGANTUR AD CATHOLICAM SPONSALIUM VEL MATRIMONII FORMAM SERVANDAM.

The Church has never claimed jurisdiction over the marriages of unbaptized persons, the validity of whose unions she considers to depend on natural law and on the legislation of the civil authorities to whom they are subject. But valid baptism necessarily subjects its recipient to the authority of the Church, and this authority she has always maintained, especially with regard to marriage.[105] She maintains it even in the present exception in favor of baptized non-Catholics, for the fact that she exempts proves her conscious of her right of control.

The Fathers of the Council of Trent aimed at making a

[104] S. Cong. Concilli, Feb. 1, 1908 and March 28, 1908. See Appendix C for text of the *Provida*.

[105] Ben. XIV, "Matrimonia," Nov. 4, 1748; "Ad Tuas Manus," Aug. 8, 1748.

law which would not touch the marriages of Protestants, but subsequent events defeated their purpose, and in spite of special declarations and concessions, the *Tametsi* in some countries affected Protestant marriages. This was the case in the province of Santa Fe, in the United States. In the Vatican Council, the Bishops of France, a country which furnished a most signal example of the inconveniences of such a condition, prayed that the marriages of heretics or schismatics might no longer be affected by the impediment of clandestinity.[106] This desire was repeated by all the consultors who helped to formulate the *Ne Temere,* and its realization in the new law will meet with universal approbation.

If in any case non-Catholic marriages or *sponsalia* (that is those in which both parties do not belong to the Church) have to be considered by church authorities, their value will have to be estimated independently of the *Ne Temere,* which does not affect the unions or engagements of persons outside of the Church unless they marry or engage to marry Catholics. Heretics or schismatics of the Oriental rites are included under the term "*acatholici.*" [107]

PRAESENS DECERETUM LEGITIME PUBLICATUM ET PROMULGATUM HABEATUR PER EJUS TRANSMISSIONEM AD LOCORUM ORDINARIOS: ET QUAE IN EO DISPOSITA SUNT UBIQUE VIM LEGIS HABERE INCIPIANT A DIE SOLEMNI PASCHAE RESURRECTIONIS D. N. J. C. PROXIMI ANNI 1908.

[106] Collectio Lacensis, VII, col. 842.

[107] S. Cong. Conc., March 28, 1908; S. Cong. de Prop. Fide, April 11, 1894.

INTERIM VERO OMNES LOCORUM ORDINARII CURENT HOC DECRETUM QUAMPRIMUM IN VULGUS EDI, ET IN SINGULIS SUARUM DIOECESUM PAROCHIALIBUS ECCLESIIS EXPLICARI, UT AB OMNIBUS RITE COGNOSCATUR.

PRAESENTIBUS VALITURIS DE MANDATO SPECIALI SSMI. D. N. PII PP. X, CONTRARIIS QUIBUSLIBET ETIAM PECULIARI MENTIONE DIGNIS MINIME OBSTANTIBUS.

The *Ne Temere* was both promulgated and published by its transmission to the Ordinaries of the various dioceses, but it was to take effect only on the following Easter. This is a mode of introducing a law with which the secular procedure of our States has made us familiar. Thus the Code of Virginia (Sect. 4) provides that "Every Act of assembly shall commence and be in force upon and after the first day of July next succeeding the day it becomes a law, unless another day be particularly mentioned in the Act itself." In fact it is extremely common to have a secular law "take effect from the day of its passage," a clause which recurs so often in the laws of Maryland. The eight months and seventeen days which elapsed between the enactment of the *Ne Temere* and its application, more than suffices, especially in view of the notoriety which it received, to bring it to the knowledge of all persons concerned.

The law thus promulgated binds throughout the Church, that is, as explained above, it governs all marriages and engagements to which a Catholic of the Latin rite is a party. Some Spanish writers [108] have attempted to maintain that *sponsalia* in Spain may and must still be contracted in ac-

[108] Arribas, *La Ciudad de Dios*, 1907, p. 233; Martinez, *Espana y America*, 1907, p. 444; Rodriguez, *Espana y America*, 1908, p. 153.

cordance with the old Spanish custom, but their position is untenable. Perhaps the strongest argument that can be brought against it is the evident intention of the Pope to do away with all diversities of law and practice and to unify the matrimonial legislation of the Church. This intention is deducible not only from the entire tenor of the decree, but also from the phrases "*ubique vim legis habere,*" "*contrariis quibuslibet etiam peculiari mentione dignis minime obstantibus.*" This law was to furnish norms by which "*sponsalium et matrimonii disciplina in posterum regeretur,*" and its purpose would have been defeated if local divergent practices were to be permitted. It is as useless, in view of the purpose of the law and its language, to maintain the continuance or contrary particular custom, as it would have been to defend presumed incardination in the United States after the decree of the Congregation of the Council, July 20, 1898. In both cases something might have been said on the ground of legal theory in behalf of local practices, but in each case the explicit intention of the legislator prevails.

An obligation was imposed on all Ordinaries to have the *Ne Temere* translated and explained in every parish church before Easter, 1908, but it is quite clear that subsequent explanation will be necessary for some time, and that it will continue to be given. The decree binds even if such explanation has not been made, and even if the faithful are unaware of the promulgation and consequences of the law.

APPENDIX.

APPENDIX A.

TEXT OF THE "NE TEMERE."

DECRETUM

DE SPONSALIBUS ET MATRIMONIO

IUSSU ET AUCTORITATE SS. D. N. PII PAPAE X A S. CONGREGATIONE CONCILII EDITUM

Ne temere inirentur clandestina coniugia, quae Dei Ecclesia iustissimis de causis semper detestata est atque prohibuit, provide cavit Tridentinum concilium, *Cap.* 1, *Sess. XXIV, de reform. matrim* edicens: "Qui aliter quam praesente parocho vel alio sacerdote de ipsius parochi seu Ordinarii licentia et duobus vel tribus testibus matrimonium contrahere attentabunt, eos Sancta Synodus ad sic contrahendum omnino inhabiles reddit, et huiusmodi contractus irritos et nullos esse decernit."

Sed cum idem Sacrum Concilium praecepisset, ut tale decretum publicaretur in singulis paroeciis, nec vim haberet nisi iis locis ubi esset promulgatum; accidit ut plura loca, in quibus publicatio illa facta non fuit, beneficio tridentinae legis carue-

rint, hodieque careant, et haesitationibus atque incommodis veteris disciplinae adhuc obnoxia maneant.

Verum nec ubi viguit nova lex, sublata est omnis difficultas. Saepe namque gravis exstitit dubitatio in decernenda persona parochi, quo praesente matrimonium sit contrahendum. Statuit quidem canonica disciplina, proprium parochum eum intelligi debere, cuius in paroecia domicilium sit, aut quasi domicilium alterutrius contrahentis. Verum quia nonnunquam difficile est iudicare, certo ne constet de quasi-domicilio, haud pauca matrimonia fuerunt obiecta periculo ne nulla essent: multa quoque, sive inscitia hominum sive fraude, illegitima prorsus atque irrita deprehensa sunt.

Haec dudum deplorata, eo crebrius accidere nostra aetate videmus, quo facilius ac celerius commeatus cum gentibus, etiam disjunctissimis, perficiuntur. Quamobrem sapientibus viris ac doctissimis visum est expedire ut mutatio aliqua induceretur in iure circa formam celebrandi connubii. Complures etiam sacrorum Antistites omni ex parte terrarum, praesertim e celebrioribus civitatibus, ubi gravior apparet necessitas, supplices ad id preces Apostolicae Sedi admoverunt.

Flagitatum simul est ab Episcopis, tum Europae plerisque, tum aliarum regionum, ut incommodis occurreretur, quae ex sponsalibus, idest mutuis promissionibus futuri matrimonii privatim initis, derivantur. Docuit enim experientia satis, quae secum pericula ferant eiusmodi sponsalia; primum quidem incitamenta peccandi causamque cur inexpertae puellae decipiantur; postea dissidia ac lites inextricabiles.

His rerum adiunctis permotus SSmus D. N. Pius PP. X, pro ea quam gerit omnium Ecclesiarum sollicitudine cupiens ad memorata damna et pericula removenda temperatione aliqua uti, commisit S. Congregationi Concilii ut de hac re videret, et quae opportuna aestimaret, Sibi proponeret.

Voluit etiam votum audire Consilii ad ius canonicum in unum redigendum constituti, nec non Emorum Cardinalium qui pro eodem codice parando speciali commissione delecti sunt: a quibus, quemadmodum et a S. Congregatione Concilii,

conventus in eum finem saepius habiti sunt. Omnium autem sententiis obtentis, SSmus Dominus S. Congregationi Concilii mandavit, ut decretum ederet quo leges a Se ex certa scientia et matura deliberatione probatae continerentur, quibus sponsalium et matrimonii disciplina in posterum regeretur, eorumque celebratio expedita, certa atque ordinata fieret.

In executionem itaque Apostolici mandati S. Concilii Congregatio praesentibus litteris constituit atque decernit ea quae sequuntur.

De sponsalibus.

I. Ea tantum sponsalia habentur valida et canonicos sortiuntur effectus, quae contracta fuerint per scripturam subsignatam a partibus et vel a parocho, aut a loci Ordinario, vel saltem a duobus testibus.

Quod si utraque vel alterutra pars scribere nesciat, id in ipsa scriptura adnotetur; et alius testis addatur, qui cum parocho, aut loci Ordinario, vel duobus testibus de quibus supra, scripturam subsignet.

II. Nomine parochi hic et in sequentibus articulis venit non solum qui legitime praeest paroeciae canonice erectae; sed in regionibus, ubi paroeciae canonice erecta non sunt, etiam sacerdos cui in aliquo definito territorio cura animarum legitime commissa est, et parocho aequiparatur; et in missionibus, ubi territoria necdum perfecte divisa sunt, omnis sacerdos a missionis Moderatore ad animarum curam in aliqua statione universaliter deputatus.

De matrimonio.

III. Ea tantum matrimonia valida sunt, quae contrahuntur coram parocho vel loci Ordinario vel sacerdote ab alterutro delegato, et duobus saltem testibus, iuxta tamen regulas in sequentibus articulis expressas et salvis exceptionibus quae infra n. VII et VIII ponuntur.

IV. Parochus et loci Ordinarius valide matrimonio adsistunt,

§ 1. a die tantummodo adeptae possessionis beneficii vel initi officii, nisi publico decreto nominatim fuerint excommunicati vel ab officio suspensi;

§ 2. intra limites dumtaxat sui territorii: in quo matrimoniis nedum suorum subditorum, sed etiam non subditorum valide adsistunt;

§ 3. dummodo invitati ac rogati, et neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum.

V. Licite autem adsistunt,

§ 1. constito sibi legitime de libero statu contrahentium, servatis de iure servandis;

§ 2. constito insuper de domicilio, vel saltem de menstrua commoratione alterutrius contrahentis in loco matrimonii;

§ 3. quod si deficiat, ut parochus et loci Ordinarius licite matrimonio adsint, indigent licentia parochi vel Ordinarii proprii alterutrius contrahentis, nisi gravis intercedat necessitas, quae ab ea excuset.

§ 4. Quoad *vagos,* extra casum necessitatis parocho ne liceat eorum matrimoniis adsistere, nisi re ad Ordinarium vel ad sacerdotem ab eo delegatum delata, licentiam adsistendi impetraverit;

§ 5. In quolibet autem casu pro regula habeatur, ut matrimonium coram sponsae parocho celebretur, nisi aliqua iusta causa excuset.

VI. Parochus et loci Ordinarius licentiam concedere possunt alii sacerdoti determinato ac certo, ut matrimoniis intra limites sui territorii adsistat.

Delegatus autem, ut valide et licite adsistat, servare tenetur limites mandati et regulas pro parocho et loci Ordinario n. IV et V. superius statutas.

VII. Imminente mortis periculo, ubi parochus, vel loci Ordinarius, vel sacerdos ab alterutro delegatus, haberi nequeat, ad consulendum conscientiae et (si casus ferat) legitimationi prolis, matrimonium contrahi valide ac licite potest coram quolibet sacerdote et duobus testibus.

VIII. Si contingat ut in aliqua regione parochus locive Ordinarius, aut sacerdos ab eis delegatus, coram quo matrimonium celebrari queat, haberi non possit, eaque rerum conditio a mensa iam perseveret, matrimonium valide ac licite iniri potest emisso a sponsis formali consensu coram duobus testibus.

IX. § 1. Celebrato matrimonio, parochus, vel qui eius vices gerit, statim describat in libro matrimoniorum nomina coniugum ac testium, locum et diem celebrati matrimonii, atque alia, iuxta modum in libris ritualibus vel a proprio Ordinario praescriptum; idque licet alius sacerdos vel a se vel ab Ordinario delegatus matrimonio adstiterit.

§ 2. Praeterea parochus in libro quoque baptizatorum adnotet, coniugem tali die in sua parochia matrimonium contraxisse. Quod si coniux alibi baptizatus fuerit, matrimonii parochus notitiam initi contractus ad parochum baptismi sive per se, sive per curiam episcopalem transmittat, ut matrimonium in baptismi librum referatur.

§ 3. Quoties matrimonium ad normam n. VII aut VIII contrahitur, sacerdos in priori casu, testes in altero, tenentur in solidum cum contrahentibus curare, ut initum coniugium in praescriptis libris quam primum adnotetur.

X. Parochi qui heic hactenus praescripta violaverint, ab Ordinariis pro modo et gravitate culpae puniantur. Et insuper si alicuius matrimonio adstiterint contra praescriptum § 2 et 3 num. V, emolumenta *stolae* sua ne faciant, sed proprio contrahentium parocho remittant.

XI. § 1. Statutis superius legibus tenentur omnes in catholica Ecclesia baptizati et ad eam ex haeresi aut schismate conversi (licet sive hi, sive illi ab eadem postea defecerint), quoties inter se sponsalia vel matrimonium ineant.

§ 2. Vigent quoque pro iisdem de quibus supra catholicis, si cum acatholicis sive baptizatis sive non baptizatis, etiam post obtentam dispensationem ab impedimento mixtae religionis vel disparitatis cultus, sponsalia vel matrimonium contrahunt; nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum.

§ 3. Acatholici sive baptizati, sive non baptizati, si inter se contrahunt, nullibi ligantur ad catholicam sponsalium vel matrimonii formam servandam.

Praesens decretum legitime publicatum et promulgatum habeatur per eius transmissionem ad locorum Ordinarios: et quae in eo disposita sunt ubique vim legis habere incipiant a die solemni Paschae Resurrectionis D. N. I. C. proximi anni 1908.

Interim vero omnes locorum Ordinarii curent hoc decretum quamprimum in vulgus edi, et in singulis suarum dioecesum parochialibus ecclesiis explicari, ut ab omnibus rite cognoscatur.

Praesentibus valituris de mandato speciali SSmi D. N. Pii PP. X, contrariis quibuslibet etiam peculiari mentione dignis minime obstantibus.

Datum Romae die 2ª mensis Augusti anni 1907.

VINCENTIUS CARD. EP. PRAENEST., *Praefectus.*
C. DE LAI, *Secretarius.*

APPENDIX B.

SUPPLEMENTARY DECISIONS.

I.

ROMANA ET ALIARUM

DUBIORUM CIRCA DECRETUM DE SPONSALIBUS ET MATRIMONIO

Die 1 *Februarii* 1908.

I. An decreto Ne temere adstringantur etiam catholici ritus orientalis.—Et quatenus negative:

II. Utrum ad eosdem decretum extendere expediat.—Et quatenus saltem pro aliquo loco decretum non fuerit extensum:

III. Utrum validum sit matrimonium contractum a catholico ritus latini cum catholico ritus orientalis, non servata forma ab eodem decreto statuta.

IV. An sub art. XI, § 2, in exceptione enunciata illis verbis "nisi pro aliquo particulari loco aut regione aliter a S. Sede sit statutum" comprehendatur tantummodo Constitutio Provida Pii PP. X; an potius comprehendantur quoque Constitutio Benedictina et cetera eiusmodi indulta clandestinitatem respicientia.

V. Num in imperio Germaniae catholici, qui ad sectam haereticam vel schismaticam transierunt, vel conversi ad fidem catholicam ab ea postea defecerunt, etiam in invenili vel infantili aetate, ad valide cum persona catholica contrahendum adhibere debeant formam in decreto *Ne temere* statutam, ita scilicet ut contrahere debeant coram parocho et duobus saltem testibus.—At quatenus affirmative:

VI. An, attentis peculiaribus circumstantiis in imperio Germaniae existentibus, opportuna dispensatione provideri oporteat.

VII. Ubinam et quomodo cappellani castrenses, vel parochi nullum absolute territorium nec cumulative cum alio parocho habentes, at iurisdictionem directe exercentes in personas aut familias, adeo ut has personas sequantur quocumque se conferant, valide matrimoniis suorum subditorum adsistere valeant.

VIII. Ubinam et quomodo parochi qui, territorium exclusive proprium non habentes, cumulative territorium cum alio vel aliis parochis retinent, matrimoniis adsistere valeant.

IX. Ubinam et quomodo parochus, qui in territorio aliis parochis assignato nonnullas personas vel familias sibi subditas habet, matrimoniis adsistere valeat.

X. Num cappellani seu rectores piorum cuiusvis generis locorum, a parochiali iurisdictione exemptorum, adsistere valide possint matrimoniis absque parochi vel Ordinarii delegatione.

XI. An a decreto *Ne temere* abolita sit lex vel consuetudo in nonnullis dioecesibus vigens, vi cuius a Curia episcopali peragenda sunt acta, quibus constet de statu libero contrahentium, et dein venia fiat parochis adsistendi matrimoniis.

XII. An et quousque expediat prorogare executionem decreti Ne temere pro nonnullis locis iuxta Ordinariorum petitiones.

Quibus vero dubiis Emi Patres responderunt:

Ad I. Negative.

Ad II. Ad S. Congregationem de Propaganda Fide.

Ad III. Dilata et exquiratur votum duorum Consultorum, qui prae oculis habeant leges hac de re vigentes quoad Orientales.

Ad IV. Comprehendi tantummodo Constitutionem PROVIDA, non autem comprehendi alia quaecumque decreta, facto verbo cum SSmo; et ad mentem.

Ad V. Affirmative.

Ad VI. Negative, ideoque servetur decretum NE TEMERE.

Ad VII. Quoad capellanos castrenses aliosque parochos, de quibus in dubio, nihil esse immutatum.

Ad VIII. Affirmative in territorio cumulative habito.

Ad IX. Affirmative, quoad suos subditos tantum ubique in dicto territorio, facto verbo cum SSmo.

Ad X. Affirmative pro personis sibi creditis, in loco tamen ubi iurisdictionem exercent, dummodo constet ipsis commissam fuisse plenam potestatem parochialem.

Ad XI. Servetur solitum.

Ad XII. Ad Emum Praefectum cum SSmo.

II.

SACRA CONGREGATIO CONCILII

ROMANA ET ALIARUM

DUBIORUM CIRCA DECRETUM DE SPONSALIBUS ET MATRIMONIO.

Propositis in generali Congregatione diei 28 Martii 1908 sequentibus dubiis, nempe:

I. Utrum validum sit matrimonium contractum a catholico ritus latini cum catholico ritus orientalis, non servata forma a decreto *Ne temere* statuta.

II. An in Art. XI, § 2 eiusdem decreti sub nomine aca-

tholicorum comprehendantur etiam schismatici et haeretici rituum orientalium.

III. Num exceptio, per Const. Provida in Germania inducta, censenda sit uti mere localis, aut etiam personalis.

IV. An Ordinarii et parochi nedum explicite sed etiam implicite "invitati ac rogati," dummodo tamen "neque vi neque metu gravi constricti requirant excipiantque contrahentium consensum," valide matrimoniis assistere possint.

V. An ad licitam matrimonii celebrationem habenda sit ratio dumtaxat menstruae commorationis aut etiam quasi-domicilii.

VI. Utrum sponsalia, praeterquam coram Ordinario aut parocho, celebrari valeant etiam coram ab alterutro delegato.

VII. Utrum sponsalia celebrari possint dumtaxat coram Ordinario vel parocho domicilii aut menstruae commorationis, an etiam coram quolibet Ordinario aut parocho.

Emi Patres, omnibus sedulo perpensis, respondendum mandarunt:

Ad I. Negative.

Ad II. Affirmative.

Ad III. Exceptionem valere tantummodo pro natis in Germania ibidem matrimonium contrahentibus, facto verbo cum SSmo.

Ad IV. Affirmative.

Ad V. Affirmative ad primam partem, negative ad secundam.

Ad VI. Negative.

Ad. VII. Posse celebrari coram quolibet Ordinario aut parocho, dummodo intra limites territorii eiusdem Ordinarii vel parochi.

Die autem 30 dicti mensis Martii SSmus Dnus Noster, audita relatione infrascripti Secretarii S. C. Concilii, supra relatas Emorum Patrum resolutiones ratas habuit et approbavit, quibuslibet in contrarium minime obstantibus.

VINCENTIUS Card. Ep. Praenest., *Praefectus.*
B. POMPILI, *Secretarius.*

APPENDIX C.

TEXT OF THE "PROVIDA."

PIUS EPISCOPUS SERVUS SERVORUM DEI

AD PERPETUAM REI MEMORIAM.

Provida sapientique cura quavis aetate Sancta Ecclesia legibus latis ea disposuit quae ad christianorum connubiorum firmitatem et sanctitatem pertinerent. In quibus legibus illa eminentem locum habet qua Sancta Synodus Tridentina clandestinorum matrimoniorum pestem abolere et ex populo christiano extirpare contendit. Magnam ex hoc Tridentino decreto utilitatem in universam rempublicam christianam promanasse et hodie quoque promanare apud omnes in confesso est. Nihilominus ut sunt res humanae, contigit alicubi, et praesertim in Imperio Germanico, propter lamentabilem maximamque in religione divisionem et catholicorum cum haereticis permixtionem in dies augescentem, ut cum praedictae legis observantia incommoda etiam quaedam nec levia coniungerentur. Nimirum cum ex voluntate concilii caput *Tametsi* non antea in singulis paroeciis vim obligandi habere coepit quam in illis rite esset promulgatum, et cum haec ipsa promulgatio an facta sit multis in locis dubitetur, incertum quoque non raro sit an lex Concilii obliget etiam acatholicos uno aliove in loco morantes, maxima inde ac molestissima in plurimis Imperii Germanici locis nata est iuris diversitas et dissimilitudo plurimaeque et spinosae exortae sunt quaestiones quae in iudicibus quidem persaepe perplexitatem,

in populo fideli quamdam legis irreverentiam, in acatholicis perpetuas cierent querelas et criminationes. Non omisit quidem Sedes Apostolica pro nonnullis Germaniae dioecesibus opportunas edere dispositiones et declarationes, quae tamen iuris discrepantias minime sustulerunt.

Atque haec moverunt complures Germaniae episcopos ut iterum iterumque Sedem Apostolicam adirent communibus precibus huic rerum conditioni remedium petentes. Quorum preces Decessor Noster f. r. Leo XIII benigne excipiens praecepit ut ceterorum quoque Germaniae Praesulum vota exquirerentur. Quibus acceptis et toto negotio in Suprema Congregatione Sacrae Romanae et Universalis Inquisitionis mature discusso, Nostrum esse officium intelleximus praesenti rerum statui efficax et universale levamen afferre. Itaque ex certa scientia et plenitudine Nostrae potestatis, ut consulamus sanctitati firmitatique matrimonii, disciplinae unitati et constantiae, certitudini iuris, faciliori reconciliationi poenitentium, ipsi quoque paci et tranquillitati publicae, declaramus, decernimus ac mandamus:

I. In universo hodierno Imperio Germaniae caput *Tametsi* Concilii Tridentini quamvis in pluribus locis sive per expressam publicationem, sive per legitimam observantiam, nondum fuerit certo promulgatum et inductum, tamen inde a die festo Paschae (id est a die decima quinta Aprilis) huius anni millesimi nongentesimi sexti, omnes catholicos, etiam hucusque immunes a forma Tridentina servanda ita adstringat ut inter se non aliter quam coram parocho et duobus vel tribus testibus validum matrimonium celebrare possint.

II. Matrimonia mixta quae acatholicis cum haereticis vel schismaticis contrahuntur, graviter sunt manentque prohibita, nisi accedente iusta gravique causa canonica, datis integre, formiter, utrimque legitimis cautionibus, per partem catholicam dispensatio super impedimento mixtae religionis rite fuerit obtenta. Quae quidem matrimonia, dispensatione licet impetrata, omnino in facie Ecclesiae coram parocho ac duobus vel tribus testibus celebranda sunt, adeo ut graviter delinquant

qui coram ministro acatholico vel coram solo civili magistratu vel alio quolibet modo clandestino contrahunt. Imo si qui catholici in matrimoniis istis mixtis celebrandis ministri acatholici operam exquirunt vel admittunt, aliud patrant delictum et canonicis censuris subiacent.

Nihilominus matrimonia mixta in quibusvis Imperii Germanici provinciis et locis, etiam in iis quae iuxta Romanarum Congregationum decisiones vi irritanti capitis *Tametsi* certo hucusque subiecta fuerunt, non servata forma Tridentina iam contracta vel (quod Deus avertat) in posterum contrahenda, dummodo nec aliud obstet canonicum impedimentum, nec sententia nullitatis propter impedimentum clandestinitatis ante diem festum Paschae huius anni legitime lata fuerit, et mutuus coniugum consensus usque ad dictam diem perseveraverit pro validis omnino haberi volumus, idque expresse declaramus, definimus atque decernimus.

III. Ut autem iudicibus ecclesiasticis tuta norma praesto sit, hoc idem iisdemque sub conditionibus et restrictionibus declaramus, statuimus ac decernimus de matrimoniis acatholicorum, sive haereticorum sive schismaticorum, inter se in iisdem regionibus non servata forma Tridentina hucusque contractis vel in posterum contrahendis; ita ut si alter vel uterque acatholicorum coniugum ad fidem catholicam convertatur, vel in foro ecclesiastico controversia incidat de validitate matrimonii duorum acatholicorum cum quaestione validitatis matrimonii ab aliquo catholico contracti vel contrahendi connexa, eadem matrimonia ceteris paribus, pro omnino validis pariter habenda sint.

IV. Ut demum Decretum hoc Nostrum ad publicam notitiam perveniat, praecipimus Imperii Germanici Ordinariis ut illud per ephemerides dioecesanas aliosque opportuniores modos ante diem Paschae anni currentis cum clero populoque fideli communicent.

Datum Romae apud S. Petrum die XVIII Januarii MDCCCCVI, Pontificatus Nostri anno tertio.

PIUS PP X.

APPENDIX D.

SACRA CONGREGATIO NEGOTIIS ECCLES. EXTRAORD. PRAEPOSITA.

Die V Nov. 1901.

Per Decretum Sacrae Cong. Neg. Eccl. Extr. praepositae, datum die 1 Jan. anno 1900, extensa fuit ad Americam Latinam declaratio S. C. Concilii, edita pro Hispania die 31 Jan. 1880 sub hac formula:—Sponsalia quae contrahuntur in regionibus nostris absque publica scriptura invalida esse, et publicam scripturam supplere non posse informationem matrimonialem. . . Circa primam partem hujus declarationis non est una doctorum sententia; plerique enim asserunt, invaliditatem ejusmodi sponsalium respicere utrumque forum, tam externum quam internum; nonnulli vero tenent invaliditatem non posse sustineri pro foro interno, dummodo certo constet de deliberato consensu utriusque contrahentis. Suntne invalida praedicta sponsalia absque publica scriptura etiam in foro interno?

Resp.—Affirmative, seu ESSE INVALIDA ETIAM IN FORO INTERNO.

APPENDIX E.

FORM FOR SPONSALIA.

By way of suggestion, the following form of an engagement contract is offered.

..... (Place and date.)

The undersigned hereby mutually give and accept a promise of future marriage to be contracted by them according to the laws of the Catholic Church.

Signatures of the parties. { N. N..... of the parish of..... N. N..... of the parish of.....

Witness: N. N.....
Parish priest of.....

If one of the parties or both be unable to write, the only difference will be that the signature of that party or of those parties (as the case may be) will be omitted, the word "Witness" will be altered to "Witnesses," and after the signature of the parish priest will appear the signature of *one* other witness, with a reference to the inability to write which made the presence of this additional witness necessary. Thus,—

Witnesses,—N. N.....
Parish priest of .....
N. N. .....
of.....
(Appears because.....unable to write.)

For directions as to modifications in this form when *sponsalia* are contracted without the presence of the parish priest, see page 27.

APPENDIX F.

BIBLIOGRAPHY OF THE "NE TEMERE."

ALBERTI, Commentarium in Decretum de Sponsalibus et Matrimonio, Acquapendente, 1908 ;

BORIERO, Sponsali e Matrimonio, Nuova Legislazione Canonica, Padova, 1908 ;

BOUDINHON, Le Marriage et Les Fiançailles, 4th ed., Paris, 1908 ;

CIOLLI, Dichiaramento dello Nuova Legge riguardante gli Sponsali e il Matrimonio, Firenze, 1908 ;

CRONIN, The New Matrimonial Legislation, Rome, 1908 ;

DE LEO, Per la Pratica Esecuzione del Decreto Ne Temere, Napoli, 1908 ;

DESMET, Commentarius in Decretum de Sponsalibus et Matrimonio, Bruges, 1908 ;

DEVINE, The Law of Christian Marriage, New York, 1908 (a general treatment of marriage, with a section devoted to the Ne Temere) ;

FERRERES, Los Esponsales y el Matrimonio segun la Novisima Disciplina, Barcelona, 1908 ;

GENNARI, Breve Commento della Nuova Legge sugli Sponsali e sul Matrimonio, 3rd ed., Rome, 1908 ;

HARING, Das Neue Ehedekret Ne Temere, Graz, 1908 ;

KNECHT, Die Neuen Eherechtlichen Dekrete "Ne Temere" und "Provida," 4th ed., Koln, 1908 ;

LEITNER, Die Verlobungs und Eheschliessungsform nach dem Dekrete Ne Temere, 3rd ed., Regensburg, 1908 ;

MCNICHOLAS, The New Marriage Legislation, Philadelphia, 1908 ;

NOLDIN, Decretum de Sponsalibus et Matrimonio, 2nd ed., Innsbruck, 1908 ;

RUSSO, La Nuova Legge Ecclesiastica sul Matrimonio Cristiano, Palermo, 1908 ;

TRENTA, La Nuova Disciplina sulla Celebrazione degli Sponsali e del Matrimonio, Ascoli Piceno, 1907 ;

VERMEERSCH, De Forma Sponsalium ac Matrimonii post Decretum Ne Temere, 3rd ed., Bruges, 1908.

Explanatory articles and notes have also appeared in a number of periodicals,—*American Ecclesiastical Review*, 1907 and 1908 ; *Il Consulente Ecclesiastico*, 1908 ; *The Month*, April, 1908 ; *Irish Ecclesiastical Record*, 1907 and 1908 ; *Espana y America*. 1907 and 1908 ; *The Tablet*, 1907 ; *Revue des Sciences Ecclésiastiques*, 1908 ; *Nouvelle Revue Theologique*, 1907 and 1908 ; *Rivista di Scienze e Lettere*, 1907 and 1908 ; *Les Questions Ecclésiastiques*, 1908 ; *Strassburger Diozesanblatt*, 1907 and 1908 ; *Rome*, 1907 and 1908 ; *Razon y Fe*, 1907 and 1908 ; *Ciudad de Dios*, 1907 and 1908 ; *Il Monitore Ecclesiastico*, 1907 and 1908 ; *Analecta Ecclesiastica*, 1908 ; *Collationes Brugenses*, 1908 ; *Revista del Arzobispado de Buenos Aires*, 1908 ; *Boletin Eclesiastico de Guadalajara*, 1907 ; *La Scuola Cattolica*, 1908 ; *Revue Ecclesiastique de Metz*, 1908 ; *Université Catholique*, 1908 ; *Rivista Ecclesiastica*, 1908.

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